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**National Highway
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INTRODUCTION

PURPOSE

This Digest reports the status of State laws that are concerned with drunk driving offenses and alcoholic beverage control. Unless otherwise indicated, the status of the laws reported is January 1, 1999.

ORGANIZATION

The Digest is divided into three areas: (1) Introduction; (2) High Interest Legislation; and (3) State Law Summary. The Summary is organized by State and then by specific legal topics. The Summary includes code and, where needed, case law citations; these should help individuals conducting additional research in this area of the law. It should be noted that the Summary can be used to facilitate the comparison of State laws in the subject areas.

The Appendix, using the State Law Summary's format, gives the Uniform Vehicle Code's provisions on implied consent, drunk driving, vehicle homicide and driving while license is either suspended or revoked.

DEFINITIONS

Administrative Per Se Law. An "administrative per se law" allows a State's driver licensing agency to either suspend or revoke a driver's license based either on a specific alcohol concentration or on some other criteria related to alcohol or drug use and driving. Such action is completely independent of any licensing action related to a driver's conviction for a drunk driving offense. These laws usually cover both resident and nonresident drivers. However, for nonresident drivers, the action would be limited to denying driving privileges in the sanctioning State.

Commercial Motor Vehicle. For drunk driving offense purposes, most States define a "commercial motor vehicle" (CMV) as one that either (1) has a gross vehicle weight ≥26,001 pounds, (2) is designed to transport 16 or more persons including the driver or (3) transports hazardous materials.

Dram Shop Laws. Statutory or case law which provides that a person, who serves alcoholic beverages to an intoxicated individual, may be liable for the damages caused by such individual. In some States, a server may also be liable for injuries sustained by the intoxicated individual.

DWI, DUI & Drunk Driving Offense. These are generally "non-legal" terms that refer to any criminal action related to driving a motor vehicle either (1) while "illegal per se" or (2) while either impaired by, under the influence of or intoxicated by alcohol or other drugs.

Happy Hour Laws. For the purposes of this Digest, this is either a statute or regulation that prohibits the sale of alcoholic beverages below the price per quantity normally charged for such beverages.

Homicide by Vehicle. "Homicide by vehicle" is the unlawful and unintentional

death caused by a person while violating laws related to motor vehicle operation.

Illegal Per Se Law. A State law that makes it a criminal offense to operate a motor vehicle either (1) at or above a specified alcohol concentration in either the blood, breath or urine or (2) with any amount of a drug, usually a controlled (illegal) substance, in the body.

Implied Consent Law. This type of law provides that a person impliedly consents to submit to a test for either an alcohol or drug content in their body if they are arrested or otherwise detained for a DWI offense. If the person refuses to submit to such a test, the law usually provides that their driving privileges will be either suspended or revoked. The results obtained from such a test are usually admissible into evidence at a DWI trial.

Intoxicating Liquor. A number of State laws provide that it is illegal to operate a vehicle while under the influence of "intoxicating liquor" (instead of under the influence of alcohol). However, the term "intoxicating liquor" is not defined in many of the State motor vehicle codes that provide for this type of drunk driving offense. Nevertheless, such term usually refers to all types alcoholic beverages (i.e., beer, wine and liquor). See the definitions of "alcoholic liquor," "intoxicating liquor" and "liquor" in Black's Law Dictionary, Sixth Edition, West Publishing Company.

Mandatory Sanctions. A "mandatory sanction" means either a criminal sanction (e.g., jail, fine or community service) or an administrative licensing action (e.g., license suspension or revocation) which **must** be imposed by either a court or an administrative agency. That is, statutory law specifically requires that such sanction be given.

Preliminary Breath Test. A "Preliminary Breath Test" (PBT) refers to a breath test given by a law enforcement officer to a suspected drunk driver prior to an arrest for a drunk driving offense. The results of this test are used along with other evidence by the officer to determine if there is "probable cause" to arrest the driver for an such offense. Usually, the results of a PBT cannot be admitted into evidence.

Pre-Sentence Investigation Law. As used in this publication, this term means a law that provides that a person, who has been convicted of a drunk driving offense, undergo an evaluation to determine if they have either an alcohol or drug abuse problem.

Presumption. The term "presumption" under "Basis for a DWI Charge" refers to a specific alcohol concentration in a driver's blood, breath or urine at or above which it may be presumed that they were driving in violation of the "Standard DWI Offense".

EXPLANATIONS

Comments & Historical Notes. Comments and historical notes have been included to alert the reader to either situations or past events that may be of significance.

Off-Highway Vehicles. Not reported in this Digest are State laws that prohibit the operation of non-highway vehicles (e.g., snowmobiles, an all-terrain vehicles (ATVs) or other Off-Road Vehicles (ORVs)) either while under the influence of alcohol or drugs or at or above a specific alcohol concentration.

Sanctions. Unless otherwise stated, the sanctions are the same for **all** alcohol and drug driving offenses (e.g., driving while under the influence of either alcohol or drugs, illegal per se, et al.).

The sanctions given in the Digest for criminal offenses are those that would normally apply to adult offenders. However, it should be noted, that for juvenile offenders (persons under 18 years old), the law either may limit a court's ability to assign such punishment. Such offenders may also be subject to other sanctions for a violation of criminal laws that may not be listed in this Digest.

Nevertheless, this Digest does report the sanctions (criminal or administrative) related to State laws that have special provisions that make it a illegal for a young person (e.g., a person under 21 years old) to operate a motor vehicle either (1) at or above a specific alcohol concentration, which is below the level used to determine adult intoxication, or (2) with any measurable amount of alcohol or drugs in their body. However, the Digest does not generally report the sanctions (criminal or administrative) associated with State laws that prohibit a person, who is under the legal drinking, from consuming alcoholic beverages.

Important: The fine sanctions listed in this Digest do not include court costs.

Unless otherwise noted, Table 2 lists the minimum mandatory sanctions for non-injury and non-death related driving while under the influence (alcohol/drugs) and illegal per se offenses.

LEGISLATIVE SUBJECT AREAS

- o Basis for a DWI Charge (e.g., Under the Influence of Alcohol or Drugs, Illegal Per Se, et al.)
- o Chemical Breath Tests
  - o Preliminary
  - o Evidential (Implied Consent Law)
- o Chemical Tests of Other Substances for Alcohol/Drugs Under the Implied Consent Law
- o Adjudication of Alcohol Driving Offenses
  - o Mandatory Adjudication
  - o Anti-Plea Bargaining Statutes

- o Pre-Sentence Investigation
- o Sanctions for Refusal to Submit to a Chemical Test
- o Sanctions Following a Conviction for an Alcohol Driving Offense
- o Homicide by Vehicle
- o Driving While License Suspended or Revoked Where the Basis was an Alcohol Driving Offense
- o Habitual Offender Laws
- o BAC Tests Required for Persons Killed as a Result of a Traffic Crash
- o Laws Establishing Minimum Ages Concerning the Use of Alcohol Beverages
- o Dram Shop Laws and Related Legal Actions
- o Laws Concerning Criminal/Administrative Actions Against Employees/Owners of Licensed Liquor Establishments who Sell Alcoholic Beverages to Persons who are under the Legal Drinking Age or who are Intoxicated
- o Laws Prohibiting "Happy Hours"
- o Laws Prohibiting the Possession of Open Containers of Alcoholic Beverages in the Passenger Compartment of a Motor Vehicle
- o Laws Prohibiting the Consumption of Alcoholic Beverages in Motor Vehicles

ABBREVIATIONS & SYMBOLS

BAC = blood alcohol concentration
BrAC = breath alcohol concentration
CDL = Commercial Driver's License
cl = class
CMV = Commercial Motor Vehicle
con = consecutive
dy = day
dys = days
EMS = Emergency Medical Services
hr = hour
hrs = hours
mand = mandatory
misd = misdemeanor
mo = month
mos = months
N/A = not applicable
n.a. = not available
off(s) = offense(s)
pkg = package
rev = revocation
susp = suspension
UrAC = urine alcohol concentration
UVC = Uniform Vehicle Code
veh = vehicle
w/n = within
yr = year
yrs = years
> = greater than
< = less than
≥ = equal to or greater than
≤ = equal to or less than

FEEDBACK & FUTURE EDITIONS

Requests for future editions of or comments about the Digest should be sent to:

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SUMMARY TABLE 1 - IMPLIED CONSENT, ALCOHOL LEVELS, ET AL.

STATE	PBT[1]	Mand. Susp/Rev-Refusal*		Admin. Per Se Law (BAC)	Mandatory Susp/Rev-Admin. Per Se*			Illegal Per Se (BAC)	Presumptive Level (BAC)	Open Cont. Law[12]	Anti-Consump. Law	Dram Shop[13]
		1st	2nd		1st	2nd	3rd					
AL		S-90 dys	S-1 yr	0.08	S-90 dys	S-1 yr	S-3 yrs	0.08	0.08			L
AK	X	R-90 dys	R-1 yr	0.10	R-30 dys	R-1 yr	R-3 yrs	0.10	0.10	X[14]	X[14]	L
AZ	X	S-12 mos	S-2 yrs	0.10	S-30 dys	S-90 dys	S-90 dys	0.10	0.10		X	L
AR		S-6 mos	S-2 yrs	0.10	--[55]	S-16 mos	S-30 mos	0.10	-		X	C
CA	X	S-1 yr[34]	R-2 yrs	0.08[50]	S-30 dys[50]	S-1 yr[50]	S-1 yr[50]	0.08	0.08	X	X	L[16]
CO	X	R-1 yr[6]	R-2 yrs[6]	0.10	R-3 mos[6]	R-1 yr[6]	R-1 yr[6]	0.10	.05,.10[17]		X	L
CT		--[29]	S-1 yr	0.10	--[29]	S-1 yr	S-2 yrs	0.10	--			L[19]
DE	X	R-6 mos	R-18 mos	(.10)[3]	R-3 mos	R-1 yr	R-18 mos	0.10	(0.10[20])		X[14]	No
DC	X	S-12 mos	S-12 mos	(.05)[4]	--	--	--	0.10	(0.05[20])	X	X	C
FL	X	S-90 dys	S-18 mos	0.08	S-30 dys	S-1 yr[54]	S-1 yr[54]	0.08	(0.08[20])	X		L[22]
GA		S-1 yr	S-1 yr	0.10	--	S-120 dys	S-2 yrs	0.10	0.08	X[14]		L
HI		R-1 yr	R-2 yrs	0.08	R-30 dys	R-1 yr	R-2 yrs	0.08	(0.08[18])	X	X	C
ID		S-180 dys	S-1 yr	0.08	S-30 dys	S-1 yr	S-1 yr	0.08	--	X	X	L
IL	X	--	S-2 yrs	0.08	--	S-90 dys	S-90 dys	0.08	0.08	X		L[19]
IN		S-1 yr	S-1 yr	0.10	S-180 dys[5]	S-180 dys[5]	S-180 dys[5]	0.10	0.10[31]	X[45]	X[14]	L
IA	X	R-90 dys	R-1 yr	0.10	R-30 dys	R-1 yr	R-1 yr	0.10	--	X[14]	X	L
KS	X	S-1 yr	S-1 yr	0.08	S-30 dys	S-1 yr	S-1 yr	0.08	(0.08[20])	X	X	No
KY	X	--	--	A[7]	--	--	--	0.10	--		X	L
LA		--[21]	--[21]	0.10	--[21]	--[21]	--[21]	0.10	0.10			L[23]

SUMMARY TABLE 1 - IMPLIED CONSENT, ALCOHOL LEVELS, ET AL.
(continued)

STATE	PBT[1]	Mand. Susp/Rev-Refusal*		Admin. Per Se Law (BAC)	Mandatory Susp/Rev-Admin. Per Se*			Illegal Per Se (BAC)	Presumptive Level (BAC)	Open Cont. Law[12]	Anti-Consump. Law	Dram Shop[13]
		1st	2nd		1st	2nd	3rd					
ME		S-275 dys[2]	S-18 mos	0.08	--	S-18 mos	S-4 yrs	0.08	--		X[14]	L[19]
MD	X	(S-120 dys)[60]	(S-1 yr)[60]	0.10	--	(S-90 dys)[60]	(S-90 dys)[60]	0.10	(.07[24])	X[25]	X[14]	No
MA		S-120 dys[51]	S-120 dys[51]	0.08	S≤90 dys[52]	S≤90 dys[52]	S≤90 dys[52]	No	0.08		X[14]	C
MI	X	--	S-1 yr	No	--	--	--	0.10	.07,.10[17]	X	X	L
MN	X	R-15 dys	R-180 dys	0.10	R-15 dys[56]	R-90 dys[56]	R-90 dys[56]	0.10	--	X	X	L
MS	X	S-90 dys[8]	S-90 dys[8]	0.10[9]	--	--	--	0.10	--			L
MO	X	R-90 dys	R-1 yr	0.10	S-30 dys	R-1 yr	R-1 yr	0.10	--		X[14]	L[26]
MT	X	S-6 mos	R-1 yr	No	--	--	--	0.10	(0.10[29])	--[49]	--[49]	L
NE	X	R-1 yr[44]	R-1 yr[44]	0.10	R-30 dys	R-1 yr	R-1 yr	0.10	--		X	No
NV	X	N/A[58]	N/A[58]	0.10	R-90 dys[41]	R-90 dys[41]	R-90 dys[41]	0.10	--	X	X[14]	No
NH	X	S-180 dys	S-2 yrs	0.08	S-6 mos	S-2 yrs	S-2 yrs	0.08	(0.08[20])	X		L
NJ		R-6 mos	R-2 yrs	No	--	--	--	0.10	--		X	L
NM		R-1 yr	R-1 yr	0.08	R-90 dys[10]	R-1 yr[35]	R-1 yr[35]	0.08	--	X	X	L
NY	X	R-6 mos	R-1 yr	A[7]	-	-	-	0.10	(.07,.10[38])	X	X	L
NC	X	R-10 dys	R-12 mos[59]	0.08	R-10 dys	R-10 dys	R-10 dys	0.08	--	X[25]	X[14,25]	L[19,27]
ND	X	R-1 yr	R-2 yrs	0.10	S-30 dys	S-365 dys	S-2 yrs	0.10	--	X	X	L
OH		S-30 dys	S-90 dys	0.10	S-15 dys	S-30 dys[46]	S-180 dys[47]	0.10	--	X	X	L
OK		--	--	0.10	--	--	--	0.10	(.05,.10[15])	X	X	C
OR		S-90 dys	S-1 yr	0.08	S-30 dys	S-1 yr	S-1 yr	0.08	(0.08[28])	X	X	L

SUMMARY TABLE 1 - IMPLIED CONSENT, ALCOHOL LEVELS, ET AL.
(continued)

STATE	PBT[1]	Mand. Susp/Rev-Refusal*		Admin. Per Se Law (BAC)	Mandatory Susp/Rev-Admin. Per Se*			Illegal Per Se (BAC)	Presumptive Level (BAC)	Open Cont. Law[12]	Anti-Consump. Law	Dram Shop[13]
		1st	2nd		1st	2nd	3rd					
PA	X	S-12 mos	S-12 mos	No	--	--	--	0.10	--		X[14]	L
PR	X	S-6 mos	S-1 yr	No	--	--	--	No	0.10[40]			No
RI	X	S-3 mos	S-1 yr	No	--	--	--	0.10	--		X[14]	L
SC		--	--	0.15	-	-	-	No	0.08[36]	X	X	C[37,39]
SD	X	--	--	No	--	--	--	0.10	0.10	X		No
TN		--	--	No	--	--	--	0.10	.10 (.08)[53]	X[14]	X[14]	L
TX		--[57]	S-90 dys[57]	0.10	--	S-90 dys	S-90 dys	0.10	--		X[14]	L[32]
UT		R-1 yr	R-1 yr	0.08	S-90 dys	S-1 yr	S-1 yr	0.08	--	X	X	L[19]
VT	X	S-6 mos	S-18 mos	0.08	S-90 dys	S-18 mos	S-2 yrs	0.08	0.08[36]		X[14]	L
VA	X	S-1 yr	S-1 yr	0.08	S-7 dys	S-7 dys	S-7 dys	0.08	0.08		X[14]	No
WA		R-1 yr	R-2 yrs	0.08	S-30 dys	R-2 yrs	R-2 yrs	0.08	--	X	X	C[30]
WV	X	R-90 dys[42]	R-1 yr[42]	0.10[11]	R-30 dys[42]	R-1 yr[42]	R-1 yr[42]	0.10	0.10[31]		X	C
WI	X	R-30 dys	R-90 dys	0.10[43]	--	--	--	0.10[43]	(0.10[48])	X	X	L[16]
WY		S-6 mos	S-18 mos	0.10	--	S-90 dys	S-90 dys	0.10	--			L[33]
TOTALS	31	S-23 R-17	S-25 R-19	42	S-17 R-11	S-22 R-13	S-22 R-13	0.10=33 0.08=16 No=3	0.08=8 0.10=10	29	40	L=36 C=8 No=8

S = Suspension, R = Revocation, A = Alternative, L = Statutory Law, C = Case (Common) Law

*A blank space in these columns for refusal (except Nevada) and for admin. per se jurisdictions does not mean that a jurisdiction does not have such a licensing sanction. It only means that a jurisdiction does not have a mandatory one.

SUMMARY TABLE 1 - IMPLIED CONSENT, ALCOHOL LEVELS, ET AL.
(continued)

[1]Preliminary Breath Test (Pre-arrest/nonevidentiary breath test) Law
[2]If the driver participates in an alcohol or drug treatment program, the mand susp period may be less than 275 dys.
[3]Based on probable cause of DWI. A BAC ≥0.10 is conclusive evidence of a DWI offense for the purposes of an admin. per se law violation.
[4]An admin. per se law violation is based on driving while under the influence of intoxicating liquor or drugs. An alcohol concentration ≥0.05 is *prima facie* evidence of driving while under the influence of intoxicating liquor.
[5]Suspension up to 180 days or until the DWI charges have been disposed of which ever occurs first.
[6]Refusal. The mandatory revocation periods for 1st and 2nd refusals may be reduced to respectively 3 mos and 6 mos if the driver participates in the ignition interlock program.
Admin. Per Se. The mandatory revocation periods for 1st and subsequent admin. per se violations may be reduced respectively to 1 mo and 3 mos if the driver participates in the ignition interlock program.
[7]Alternative pre-DWI criminal adjudication licensing action by the courts.
[8]License suspension for one (1) year if the driver has a prior DWI offense conviction.
[9]Special provisions/procedures.
[10]Applies to persons 21 years old or above.
[11]Or under the influence of alcohol.
[12]Laws prohibiting the possession of an open container of an alcoholic beverage in the passenger compartment of a motor vehicle.
[13]Seven (7) States and Puerto Rico do not have dram shop liability.
[14]Applies only to drivers.
[15]The lower of the two numbers is evidence of driving while impaired; the higher is *prima facie* evidence of driving while under the influence.
[16]Applies only to the actions of intoxicated minors.
[17]The lower of the two numbers is driving while impaired; the higher is driving while under the influence.
[18]Competent evidence of DWI.
[19]This state has a statute that places a monetary limit on the amount of damages that can be awarded in dram shop liability actions.
[20]An alcohol concentration which indicate *prima facie* evidence of a driving while under the influence offense.
[21]There is no mandatory licensing action if the violator is allowed to participate in the ignition interlock program.
[22]Applies only to the actions of intoxicated minors or persons known to be habitually addicted to alcohol.
[23]The statute appears to have limited actions to those committed by minors.
[24]An alcohol concentration ≥0.07 but <0.10 is *prima facie* evidence of driving while under the influence.
[25]Limited application.
[26]Cause of action limited to licensees who have been convicted of the offense of selling alcoholic beverages either to minors or to intoxicated individuals.
[27]The statute applies specifically to the actions of intoxicated minors, but the law does not foreclose developing case law as to other types of dram shop actions.
[28]Not less than 0.08 constitutes being under the influence of intoxicating liquor.
[29]A person may receive a "special permit" based on a showing of "extreme hardship". Under proposed regulations dated 9/13/93, there would be a 30 dy mand. susp.
[30]Applies only to the actions of (1) intoxicated minors or (2) adults who have lost their will to stop drinking.
[31]This state has both *prima facie* and presumptive evidence laws with an alcohol concentration ≥0.10.
[32]Statutory law has limited dram shop actions.
[33]Liability limited only to the actions of persons who are under 21 years old.
[34]90 days if the person pleads guilty to a DWI charge at the time of first arraignment with counsel.
[35]Provided there is also a 2nd or sub. DWI conviction.
[36]This alcohol concentration is an inference of DWI.
[37]Possible case law.
[38]*Prima facie* evidence of impairment.
[39]Applies to actions of intoxicated minors.
[40]A BAC ≥0.05 for persons who operate busses, trucks or other large motor vehicles.
[41]A DWI conviction following an admin. revocation cancels the admin. revocation action. Thereafter, the licensing sanctions for a DWI offense apply; this includes the right to obtain restricted driving privileges.
[42]Provided the person participates in the ignition interlock program.
[43]For a 1st & 2nd off, an alcohol concentration ≥0.10; for a 3rd or subsequent off, an alcohol concentration ≥0.08
[44]This revocation is based on administrative action.
[45]Provided the driver has an alcohol concentration ≥0.04.
[46]Applies only if there was a prior DWI offense conviction.
[47]Applies only if there were two prior DWI offense convictions.
[48]An alcohol concentration ≥0.10 is *prima facie* evidence for 1st and 2nd offs. An alcohol concentration ≥0.08 is *prima facie* evidence for 3rd and sub. offs.
[49]The Open Container/Anti-Consumption law appears to be limited to persons who are operating "common carriers".
[50]Applies only to persons ≥21 years old.
[51]Suspension for 180 days if the driver has had a previous drunk driving offense conviction. Suspension for 1 year if the driver has had two or more previous drunk driving offense convictions.
[52]Suspension until the drunk driving charges are disposed of but not more than 90 days.
[53]For a 1st offense, an alcohol concentration ≥0.10 is a presumption of driving while under the influence of an intoxicant. For a subsequent offense, an alcohol concentration ≥0.08 is a presumption of driving while under the influence of an intoxicant.
[54]This 1 year suspension only applies if there have been two or more drunk driving offense convictions. The "actual" suspension period appears to be only 11 months.
[55]A restricted hardship license may be issued for a 1st violation.
[56]If the BAC was ≥0.20, the mandatory license revocation is double that given.
[57]Mand 90 dy susp if the person has either a previous refusal or a prior admin. per se violation. Mand 180 dy susp if the person has a prior drunk/drug driving offense conviction.
[58]There is no licensing sanction for a refusal to submit to a chemical test. However, if a person refuses to submit to a chemical test, one may be administered via force.
[59]If a person does not have previous conviction for a drunk driving offense, they may only be subject to a 10 day mandatory license revocation.
[60]A suspension may be modified or a restricted license may be issued if an offender participates in the "ignition interlock" program for at least 1 yr.

SUMMARY TABLE 2 - MANDATORY SANCTIONS

STATE	Mandatory Fine ($) -- DWI Conviction			Mandatory Imprisonment -- DWI Conviction			Community Service in Lieu of Mandatory Jail			Mandatory Licensing Action -- DWI Conviction		
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
AL	--	--	--	--	48 CH	60 D	--	20 D	--	S-90 D	R-1 Y	R-3 Y
AK	250	500	1,000	72 CH[48]	20 D[48]	60 D[48]	--	--	--	R-30 D	R-1 R	R-10 Y
AZ	250	500	--	24 CH[13]	30 CD[13]	4 M[13]	--	--	--	S-90 D[20]	R-1 Y[44]	R-3 Y
AR	150	400	900	--	7 D	90 D	--	--	--	--[46]	--[46]	--[46]
CA	390[2]	375[2]	390[2]	--	96 H[1,2]	30 D[1,2]	-	10 D[1,2]	-[1,2]	--	--	R-18 M[2]
CO[X]	--	--	--	5 D[31]	7 D	7 D	(48 H)[18]	(60 H)[18]	(60 H)[18]	--	R-1 Y[47]	R-2 Y[47]
CT[X]	--	--	--	48 CH	10 D	120 D	100 H	--	--	--[42]	--[42]	--[42]
DE	--	--	--	--	60 D[34]	3 CM[34]	--	--	--	--[35]	R-6 M[35]	R-6 M
DC[X]	--	--	--	--	--	--	--	--	--	R-6 M	R-1 Y	R-2 Y
FL	--	--	--	--	10 D[10]	30 D[10]	(50 H)[18]	--	--	--	R-12 M	R-24 M
GA	300	600	1,000	(24 H)[52]	48 H	10 D	(40 H)[18]	(80 H)[18]	(20 D)[18]	--[53]	S-120 D[53]	R-5 Y[53]
HI	150[3]	500	500	48 H[3]	48 CH	10 D[10,49]	72 H[3]	100 H[49]	--	S-30 D	S-1 Y	R-1 Y
ID	--	--	--	--	10 D[10]	30 D[10]	--	--	--	S-30 D	S-1 Y	S-1 Y
IL	--	--	--	--	48 CH	48 CH	--	100 H	30 D	--	--	--
IN	--	--	--	--	5 D[4]	5 D[4]	--	10 D	10 D	S-30 D	S-1 Y	S-1 Y
IA	500[6]	1,500	2,500	48 H[54]	7 D[7]	30 D	--	--	--	R-30 dys[30]	R-1 Y	R-1 Y
KS	--	500	--	48 CH	48 CH[36]	48 CH[36]	100 H	--	--	S-30 D	S-1 Y	S-1 Y
KY	200[3]	--	--	48 H[3]	7 D	30 D	48 H[3]	--	--	S-30 D	R-12 M	R-24 M
LA	-	-	-	2 D[23]	48 H[23]	6 M[23]	4 D	30 D	--	--	--[41]	--[41]

SUMMARY TABLE 2 - MANDATORY SANCTIONS
(continued)

STATE	Mandatory Fine ($) -- DWI Conviction			Mandatory Imprisonment -- DWI Conviction			Community Service in Lieu of Mandatory Jail			Mandatory Licensing Action -- DWI Conviction		
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
ME	400	600	1,000	48 H[17]	7 D	30 D	--	--	--	S-60 D[24]	S-18 M[24]	S-4 Y[24]
MD[Y]	--	--	--	--	48 CH	48 CH	--	80 H	80 H	--	--	--
MA	--	--	--	--	30 D[8,25]	150 D[8,25]	--	--	--	S-45 D	R-6 M	R-2 Y
MI[X]	100[32]	200[32]	500[32]	--	48 CH	1 Y	--	--	--	--	R-1 Y	S-5 Y
MN	140	600	600[32]	--	48 CH[39]	90 D[55]	--	80 H[39]	--	R-15 D[26]	R-15 D[26]	R-15 D[26]
MS	200	400	500	--	--	--	--	--	--	S-30 D	S-1 Y	S-3 Y
MO	--	--	--	--	48 CH	48 CH	--	10 D	10 D	S-30 D[21]	R-2 Y[21]	R-3 Y[21]
MT	--	--	--	24 CH[9]	3 D[9,10]	10 D[9,10]	--	--	--	--	R-3 M[29]	R-3 M[29]
NE	400[38]	500[38]	600[38]	-	48 H[38]	7 D[38]	-	-	--	R-60 D[38]	R-6 M[38]	R-1 Y[38]
NV	200	500	2,000	2 D[11]	10 D[12]	1 Y[13]	96 H[11]	(100 H)[12&18]	--	R-45 D	R-1 Y	R-1.5 Y
NH	300	500	500	--	10 D[14]	10 D[14]	--	--	--	R-90 D	R-3 Y	R-3 Y
NJ	250	500	1,000	--[15]	48 CH	90 D[27]	--	(30 D)[18]	(90 D)[18]	R-6 M[22]	R-2 Y[22]	R-10 Y[22]
NM	--	500	750	--	48 CH	30 CD	--	--	--	--	R-1 Y	R-5 Y
NY[Z]	500	1,000	1,000	--	--	--	--	--	--	--	R-1 Y	R-1 Y
NC	--	--	--	--	7 D	7 D	--	--	--	--	R-2 Y	R-3 Y
ND	250	500	1,000	--	4 D[4]	60 D[4]	--	10 D	--	S-30 D	S-365 D	S-2 Y
OH	200	300	500	--	5 CD[45]	15 CD[45]	--	--	--	S-15 D	S-30 D	S-180 D
OK[X]	-	-	-	-	-	-	--	-	--	--	--	--
OR	565	565	565	48 CH	48 CH	48 CH	80 H	80 H	80 H	--	S-90 D	S-1 Y

SUMMARY TABLE 2 - MANDATORY SANCTIONS
(continued)

STATE	Mandatory Fine ($) -- DWI Conviction			Mandatory Imprisonment -- DWI Conviction			Community Service in Lieu of Mandatory Jail			Mandatory Licensing Action -- DWI Conviction		
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
PA	300[37]	300[37]	300[37]	48 CH[50]	30 D[50]	90 D[50]	--	--	--	S-1 M[5]	S-12 M	S-12 M[5]
PR	--	--	--	--	24 CH	30 D	--	10 D	--	--	--	--
RI	100	400	400	--	10 D[10]	6 M[10]	--	--	--	S-3 M	S-1 Y	S-2 Y
SC	300	1,000	3,500	48 H[43]	48 H[43]	60 D[43]	48 H[43]	10 D[43]	--	--	S-1 Y	S-4 Y[56]
SD	--	--	--	--	--	--	--	--	--	--	R-1 Y[41]	R-1 Y
TN	350	600	1,100	48 CH	45 D[10]	120 D[10]	--	--	--	--	R-2 Y	R-3 Y
TX	--	--	--	--	72 H[16]	10 D[16]	--	--	--	--	--	--
UT	700	800	1,000[51]	48 CH	240 CH	720 D	24 H	80 H	240 H	S-180 D	R-2 Y	R-2 Y
VT	--	--	--	--	48 CH	--	--	--	--	S-90 D	S-18 M	R-2 Y
VA	--	--	--	--	48 H	30 D	--	--	--	--	R-4 M[24]	R-3 Y
WA	350[4]	500[4]	1,000[4]	24 CH[4&28]	30 D[4]	90 D[4]	--	--	--	S-30 D[4]	R-1 Y[4]	R-2 Y[4]
WV	100[19]	1,000[19]	3,000[19]	24 H[19]	6 M[19]	1 Y[19]	--	--	--	R-30 D[40]	R-1 Y[40]	R-1 Y[40]
WI	150	300	600	--	5 D	30 D	--	--	--	--	R-60 D	R-90 D
WY	--	--	--	--	7 D	7 D	--	--	--	--	S-1 Y	R-3 Y
TOTALS	28	29	27	19	47	46	9	14	6	S-18 R-9	S-15 R-28	S-12 R-32

[X]Mandatory sanctions for the offenses of driving while under the influence and illegal per se.
[Y]Mandatory sanctions for the offense of driving while intoxicated.
[Z]Mandatory sanctions for the offenses of driving while intoxicated and illegal per se.

C=Consecutive, H= Hour(s), D=Day(s), M=Month(s), Y=Years(s), S=Suspension, R=Revocation
Important. A blank space in this table does not mean that a State does not have a sanction. It only means that a State does not have a mandatory sanction.

SUMMARY TABLE 2 - MANDATORY SANCTIONS
(continued)

[1]The 48 consecutive hours of imprisonment or 10 days of community service became mandatory when the Dept. of Motor Vehicles certified that an application for 23 USC §408 grant funds has been submitted to the U.S. Dept. of Transportation.
[2]The sanctions listed are for non-injury offenses.
[3]The court must sentence defendants to at least one of these sanctions but may sentence them to more than one such sanction.
[4]Where the offender's alcohol concentration was <0.15.
[5]For a 1st off, 1 mo mand susp if defendant is accepted into the Accelerated Rehabilitation Disposition program. For a 3rd off, revocation could be 5 yrs under the habibual offender law.
[6]There is a mandatory fine of $500 if the offender either (1) had a BAC/BrAC >0.15 or (2) refused to submit to a chemical test under implied consent law. However, a 1st offender is subject to a mandatory fine of $1,000 if the drunk driving offense resulted in injury to another person. Nevertheless, the law appears to allow an offender to perform community service in lieu of these mandatory fines.
[7]This sentence must be served in 48 hr segments.
[8]This sanction may be served in a residential treatment facility.
[9]This sanction only applies to driving while under the influence offenses.
[10]Must serve 48 consecutive hours.
[11]One day of imprisonment or 48 hrs of community service if 1 yr rehabilitation is taken.
[12]48 hours must be served consecutively. However, if the defendant agrees to participate in a 1 yr treatment program, the mand jail term is 5 dys with 50 hrs of mand community service.
[13]The following mandatory sanctions apply for 0.18 offenses: 1st offense-10 con dys and 2nd off-60 con dys. For a 3rd drunk driving offense (Aggravated DWI), a limited furlough may be granted.
[14]Three (3) consecutive 24 hour periods in a house of correction and seven (7) consecutive 24 hour periods in a DWI detention center. If a person has previously completed the 7 day DWI detention center program for a prior offense, they are imprisoned for 30 consecutive 24 hour periods for a subsequent offense.
[15]Mandatory treatment of not less than 12 nor more than 48 hours; this time is to be spent in an intoxicated driver resource center.
[16]As a part of community supervision.
[17]Provided the defendant, at the time of the drunk driving offense, either (1) had an alcohol concentration of 0.15 or more, (2) was driving 30 MPH over the speed, (3) was eluding a police officer or (4) was driving a vehicle with a passenger under 21 years old.
[18]Mandatory community service as well as mandatory imprisonment.
[19]Applies to DWI offs that are not related to injury or death.
[20]May not apply to certain offenders who have been suspended pursuant to the administrative per se law.
[21]Applies only to driving while intoxicated offenses.
[22]The law states that the right to operate a motor vehicle is "forfeited".
[23]Home incarceration is possible.
[24]Provided the defendant participates in a rehabilitation program.
[25]Work release is available for this period of time.
[26]If the BAC was ≥0.20, the mandatory license revocation is double that given.
[27]Not more than 90 dys as an alternative to imprisonment.
[28]In lieu of jail, a defendant may be allowed to serve 15 dys in an electronic home monitoring program.
[29]This revocation may not be mandatory if the defendant meets certain eligibility requirements for and does participate in a driver rehabilitation or improvement program.
[30]90 dys mandatory if the defendant has refused to submit to a chemical test under the implied consent law.
[31]Applies only to a 1st illegal per se conviction.
[32]Possible
[33]Followed by a period of "house arrest" with electronic monitoring.
[34]"House arrest" may be possible in lieu of a jail sentence.
[35]3 months with participation in the ignition interlock program.
[36]Followed by work release for 3 dys for a 2nd off and 88 dys for a 3rd off.
[37]Plus the following mandatory surcharges: 1st off-$50; 2nd off-$100; and, 3rd off-$200.
[38]The mandatory sanctions given are based upon a person receiving probation.
[39]The usually mandatory period is 30 days imprisonment with 48 consecutive hours. However, based on mitigating circumstances, the court may sentence a person without regard to this mandatory sanction. Nevertheless, the court must still impose either 48 consecutive hours of imprisonment or 80 hours of community service.
[40]Applies only to DWI offenses that are not related to injury or death and provided the person participates in the ignition interlock program.
[41]There is no mandatory licensing action if the offender is placed on probation and is allowed to participate in the ignition interlock program.
[42]License suspension is not mandatory in all situations. A "special permit" may be issued in cases of "significant hardship".
[43]Home detention may be used in lieu of this sanction.
[44]An amendment to the law in 1993 may have eliminated this mandatory revocation.
[45]If treatment is authorized by the court, confinement is only for 3 days in a medical facility.
[46]Licensing sanctions are via the administrative per se law.
[47]The mandatory revocation periods for 2nd and 3rd offenses may be reduced to respectively 3 mos and 6 mos if the offender participates in the ignition interlock program.
[48]Sixty (6) days mandatory for 3rd offense committed w/n 10 yrs but more than 5 yrs from a previous offense. For either a 1st or subsequent offense, it may be possible for a defendant to receive "electronic monitoring" in lieu of imprisonment.
[49]The sanctions given apply only to driving either (1) while under the influence of intoxicating liquor or (2) with an alcohol concentration ≥0.08. For driving while under the influence of a controlled substance, a 2nd offender, in lieu of imprisonment, must perform at least 80 hrs of community service; a 3rd offender only has to serve 48 con hrs of confinement.
[50]House arrest or in-patient rehabilitation may be used as alternatives to this imprisonment sentence.
[51]For a 3rd offense after 7/1/96, $2,000 or $1,500 if the court suspends sentence.
[52]24 hours if the offender's alcohol concentration was ≥0.08.
[53]Offenders <21 years old have their licenses revoked for the following mandatory periods: 1st off-6 mos (12 mos if their alcohol concentration was ≥0.08); and, 2nd and sub off-12 mos.
[54]There is a mandatory imprisonment sentence of 48 hrs if the offender (1) had a BAC/BrAC >0.15, (2) refused to submit to a chemical test under implied consent law or (3) committed a drunk driving offense that injured another person.
[55]30 days must be served consecutively or, as an alternative, 6 dys of incarceration with a program of intensive supervision.
[56]If the offense was a 3rd offense w/n 5 yrs. If the offense was 3rd offense w/n 10 yrs, the mandatory revocation period is 2 yrs.

STATE	**ALABAMA**
General Reference:	Code of Alabama

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol[1] §32-5A-191(a)(2)
Illegal Per Se Law (BAC/BrAC):	≥**0.08**[2] §32-5A-191(a)(1) ≥**0.02**[2&3] School Bus and Day Care Vehicle Operators §32-5A-191(c) Persons Under 21 Years Old-≥**0.02**[2&3] §32-5A-191(b)
Presumption (BAC/BrAC):	≥**0.08**[2] §32-5A-194(b)(3) ≥**0.02**[2] Presumption of driving under the influence of alcohol for School Bus and Day Care Vehicle Operators §32-5A-194(b)(3) ≥**0.02**[2] Presumption of driving under the influence of alcohol for persons under 21 yrs old §32-5A-194(b)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Substance**, (2) a Controlled Substance or (3) Alcohol and a Controlled Substance §32-5A-191(a)(3), (4) & (5)
Other:	For Commercial Motor Vehicle Operators, see p. 3-4.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §32-5-192
Implied Consent Law Applies to Drugs (Yes/No):	**No**
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §32-5A-194(c)
Other Information:	**Accident Related Implied Consent Law.** Under separate provisions of law, a person, who is involved in an accident, which resulted in a "serious physical injury", and where there is reasonable grounds that they were driving while under the influence of alcohol, amphetamines, opiates or cannabis, shall be deemed to have given consent to a test of their blood for the purpose of determining the alcoholic content or the presence of the drugs listed. §32-5-192.1(a) **Special Note:** A person arrested for a DWI offense shall not be released until their BAC/BrAC is <0.08 (for persons <21 yrs old, <0.02) §32-5A-191(l)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §32-5-192
Urine:	**Yes** §32-5-192
Other:	**None**

[1]In *Ex Parte Buckner,* 549 So.2d 451 (Ala. 1989), the Alabama Supreme Court held that the term "under the influence of alcohol" means "having consumed such an amount of alcohol as to affect his ability to operate a vehicle in a safe manner" (549 So.2d at 454).
[2]Standard: Percentage of alc. by wgt. in the blood. However, the law defines this as grams of alc. per 100 cubic centimeters of blood or grams of alc. per 210 liter of breath. §32-5A-194(a)(5) This definition, therefore, establishes illegal per se based on breath.
[3]Except as noted, the sanctions for this offense are the same as for any other drunk driving offense.

ALABAMA

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol Evaluation Required §32-5A-191(i)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st Refusal-**Susp-90 dys** (mand); 2nd Alc. or Drug-Related Enforcement Contact[1] (w/n 5 yrs)-**Susp-1 yr** (mand); 3rd Alc. or Drug-Related Enforcement Contact[1] (w/n 5 yrs)-**Susp-3 yrs** (mand); 4th Alc. or Drug-Related Enforcement Contact[1] (w/n 5 yrs)-**Susp-3 yrs** (mand); 5th or Sub Alc. or Drug-Related Enforcement Contact[1] (w/n 5 yrs)-**Susp-5 yrs** (mand) §§32-5A-300, 32-5A-304 & 32-5A-305 See the Comment below and the Special Note on p. 3-4.
Other:	**Refusing to Submit to a Test Under the Accident Related Implied Consent Law-Susp-2 yrs** §32-5-192.1(a) This suspension appears to be mandatory.[3]

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions Imprisonment/Fine:	1st off-Not more than **1 yr, $600 to $2,100**[2]; 2nd Off (w/n 5 yrs)-Not more than **1 yr, $1,100 to $5,100**; 3rd off **60 dys to 1 yr, $2,100 to $10,100**; 4th or subsequent off (Class C felony) **1 yr & 1 dy to 10 yrs, $4,100 to $10,100** §32-5A-191(e), (f), (g) & (h)

[1]An "alcohol or drug-related enforcement contact" includes either a refusal, admin. per se violation or a conviction for a drunk driving offense.

[2]The jail and fine sanctions do not apply to persons <21 yrs old who are convicted of a 1st offense of driving with a BAC/BrAC ≥0.02 but <0.08. §32-5A-191(b)

[3]However, the Director of Public Safety may reduce the suspension period for refusal if it is determined that the driver was not at fault in causing the accident. §32-5-192.1(d)

Special Note: A Class C felony conviction for a 4th drunk driving offense is not to be considered a felony for purposes of the State's Habitual Felony Offender Law. §32-5A-191(h)

Comment. Licensing sanctions for a refusal to submit to a chemical test also appear in §32-5-192(c) (1st refusal-**Susp 90 dys** (mand) and for a 2nd or sub. refusal-**Susp 1 yr** (mand)). However, these sanctions, even though they have not been specifically repealed, appear to have been superseded by the licensing sanctions in §32-5A-304(c) via §32-5A-309.

Sanctions Following a Conviction for a DWI Off: (continued)

Criminal Sanctions Imprisonment/Fine: (continued)	Serious Bodily Injury related to a DWI Off (assault in the first degree-Class B felony): **2 to 20 yrs**[1], not more than **$10,000**[1] §§13A-5-6(a)(2), 13A-5-11(a)(2) and 13A-6-20(a)(5) & (b)
Mandatory Minimum Term:	For non-injury DWI offs: 2nd off-**48 cons hrs**[2]; 3rd off-**60 dys**; 4th or subsequent off-**1 yr & 1 dy**[3]
Mandatory Minimum Fine ($):	**None**
Other Penalties: Community Service:	2nd Off (w/n 5 yrs)-Not less than **20 dys**[2] §32-5A-191(c) & (d)
Restitution (eg Victim's Fund)	**Yes** Victims' Compensation Fund. §15-23-1 et seq. **Special Note:** Under §15-18-65 et seq., a defendant may be required to pay restitution to a victim (or a victim's representative) as a result of damages caused by the defendant's criminal behavior.
Other:	**Special Fine.** In addition to any other fine, a person convicted of a DWI offense must pay a special fine of **$100**. The funds collected from this fine are paid into an account which is used to assist persons who have spinal cord or head injures. §32-5A-191.1(a) **Court Authorized Licensing Action.** In addition to any other sanction for a criminal violation of the traffic laws, the court may issue an order "forbidding" an offender from operating a motor vehicle for either a specified period of time or perpetually. An appellate court may modify this order. §32-5-316 See Administrative Licensing Actions below.
Administrative Licensing Actions: Pre-DWI Conviction Licensing Action: Administrative Per Se Law:	**Yes** ≥**0.08** (BAC/BrAC See Footnote No. 2 on p. 3-1.) 1st Admin. Per Se Violation-**Susp-90 dys** (mand); 2nd Alc. or Drug-Related Enforcement Contact[4] (w/n 5 yrs)-**Susp-1 yr** (mand); 3rd Alc. or Drug-Related Enforcement Contact[4] (w/n 5 yrs)-**Susp-3 yrs** (mand); 4th Alc. or Drug-Related Enforcement Contact[4] (w/n 5 yrs)-**Susp-3 yrs** (mand); 5th or Sub Alc. or Drug-Related Enforcement Contact[4] (w/n 5 yrs)-**Susp-5 yrs** (mand) §§32-5A-300, 32-5A-304 & 32-5A-305 See the Special Note on p. 3-4.
Other:	Under §§32-5A-195(k)(1) & (m), a person's license may be susp, without a preliminary hearing, for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). **Comment:** Such action could occur prior to a conviction.

[1]These sanctions apply to 1st offence convictions for assult in the first degree. To determine the sanctions for 2nd and subsequent offenses of this type, see §13A-5-9.
[2]The 20 dy community service sanction may be used as an alternative to the 48 consecutive hour imprisonment term.
[3]This imprisonment sanction may be suspended or probated if the offender successfully completes a chemical dependency program. If probation is granted, an offender may be placed on house arrest with electronic monitoring. §32-5A-191(h)
[4]An "alcohol or drug-related enforcement contact" includes a refusal, admin. per se violation and a conviction for a drunk driving offense.

Sanctions Following a Conviction for a DWI Off: (continued)

Post DWI Conviction Licensing Action:	See Footnote No. 3 and the Special Note below.
Type of Licensing Action (Susp/Rev) and Term of Withdrawal:	1st off-**Susp 90 dys**[1,3&4]; 2nd off-**Rev 1 yr**; 3rd off-**Rev 3 yrs**; 4th or subsequent offs-**Rev 5 yrs** §32-5A-191(e), (f), (g) & (h)
Mandatory Minimum Term of Withdrawal:	1st off-**90 dys**[2,3&4]; 2nd off-**1 yr**; 3rd off-**3 yrs**; 4th or subsequent offs-**Rev 5 yrs**
Other:	
Rehabilitation:	
Alcohol Education:	1st or sub off-**Yes**[5] §32-5A-191(i)
Alcohol Treatment:	1st or sub off-**Yes**[5] §32-5A-191(i)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**None**
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	

[1]Revocation is also possible via a court order. §32-5A-195(j)(2)
[2]It may be possible to "modify" this susp. period. §32-5A-195(l)
[3]A person convicted of driving while under the influence either of a controlled substance or of a combination of a controlled substance and alcohol must have their driving privileges suspended for 6 mos. §§13A-12-290 & 13A-12-291
[4]1st off-Operation of a School Bus and Day Care Vehicle Operators with a BAC/BrAC ≥0.02-**Susp 1 yr** (mand) §32-5A-191(c) 1st off-Persons under 21 yrs old driving with a BAC/BrAC ≥0.02 but <0.08-**Susp 30 dys** (mand) §32-5A-191(b)
[5]At a minimum, an offender must complete a drunk driving or substance abuse program. An offender's license cannot be reinstated until such a program has been successfully completed. §32-5A-191(h)

Special Note: The license suspensions for a drunk driving offense conviction do not apply if a person has been subject to a license suspension for either a refusal or an admin. per se law violation. §32-5A-304(c)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. Note: The disqualification provision, §32-6-49.11(a)(5), only applies to refusal to submit to a test to determine an alcohol concentration; however, the CMV implied consent provision, §32-6-49.13, applies to tests either for an alcohol concentration or for drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§32-6-49.3(2) & (3), 32-6-49.11, 32-6-49.12 & 32-6-49.13 Note: Under the CDL implied consent law, §32-6-49.13, a law enforcement officer can request a CMV operator to submit to a chemical test if the operator has been involved in an accident with a CMV that resulted in a death or a serious injury. Probable cause of a violation of the CDL law's DWI provisions is not required. **Important.** Under separate provisions of law, a CMV operator, who violates Federal Regulations (49 CFR 383.51) concerning alcohol and drug use and CMV operation (e.g., driving with a BAC/BrAC ≥0.04, driving a CMV under the influence of either alcohol or a controlled substance or refusing to submit to chemical testing), commits a misdemeanor with the following sanctions: Jail for not more than 30 dys and/or a fine of not more than $2,000. Also, the court may prohibit the offender from operating a CMV for a period of time specified by the court or perpetually. §§2 & 4 of House Bill 725 Note: This Federal Regulation provides for CDL disqualifications based on grounds which are similar to State law.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Two types of offenses (1) "Homicide by Veh"-Felony[1] §32-5A-192 (2) "Criminally Negligent Homicide" while DWI-Class C Felony §13A-6-4(a) & (c)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	(1) "Homicide by Veh"-Not less than **1 yr** nor more than **5 yrs** §32-5A-192 (2) "Criminally Negligent Homicide" while DWI-**1 yr & 1 dy to 10 yrs** §13A-5-6(a)(3)
Mandatory Minimum Term:	**None**
Fine ($ Range):	(1) "Homicide by Veh"-Not less than **$500** nor more than **$2,000** §32-5A-192 (2) "Criminally Negligent Homicide" while DWI-Not more than **$5,000** §13A-5-11(a)(3)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev**[2] §32-5A-195(j)(l)
Length of Term of Licensing Withdrawal:	Rev period is not specified in the statute.[3]
Mandatory Action--Minimum Length of License Withdrawal:	**None**
Other:	See Court Authorized Licensing Action on p. 3-4.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote Nos. 4 & 5 and Vehicle Impoundment below.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd** Not more than **180 dys** §32-6-19(a)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not less than **$100** nor more than **$500**[6] §32-6-19(a)

[1]§13A-1-2(4) & *Whirley v. State,* 481 So.2d 1151 (Ala.Cr.App. 1985)

[2]Applies only to "Homicide by Vehicle" or vehicle manslaughter offenses. For DWI criminally negligent homicide offs, licensing action would be via the regular DWI off. provisions.

[3]However, a license or privilege to drive cannot be suspended for more than 1 yr. §32-5A-195(m)

[4]Although §32-6-49.7(b) prohibits the operation of CMV while either disqualified or under an out-of-service order, the CMV law does not provide for provide specific sanctions for such violations. **Important.** However, under separate provisions of law, a CMV operator, who violates Federal Regulations (49 CFR 383.51) concerning alcohol and drug use and CMV operation (e.g., driving on an out-of-service order), commits a misdemeanor with the following sanctions: Jail for not more than 30 dys and/or a fine of not more than $2,000. Also, the court may prohibit the offender from operating a CMV for a period of time specified by the court or perpetually. §§2 & 4 of House Bill 725

[5]A person's vehicle may be forfeited to the State, if they operate such vehicle while their license is either suspended or revoked for a drunk driving offense. §32-5A-203

[6]An additional penalty of $50 is assessed for the purpose of funding the Traffic Safety and the Police Officers Standards and Training Funds. §32-6-19 This assessment appears to be mandatory.

Vehicle Impoundment If the offender's driving privileges were susp/rev because of a drunk driving of implied consent law violation, the vehicle used in the offense may be impounded by law enforcement officers. This impoundment does not apply if either a non-driver owner or other family member with a valid license is a passenger in the vehicle or there is an emergency or medical necessary jeopardizing life or limb. §32-6-19

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine:	**None**
Length of Term of License Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Rev** (discretionary) §32-6-19(a) See Court Authorized Licensing Action on p. 3-3.
Withdrawal Action:	An **additional period** of **6 mos** §32-6-19(a)
Mandatory Term of License Withdrawal Action:	**None**
Other:	

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**No** However, the implied consent law does apply to dead persons. *Lankford v. Redwing Carriers, Inc.*, 344 So.2d 515 (Ala., 1977)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1985) §§28-1-5 and 28-3A-25(a)(3) & (19)
Minimum Age (Years) Possession:	**21**[1] §28-3A-25(a)(19)
Minimum Age (Years) Consumption:	**21** §28-3A-25(a)(19)

[1]There is an exemption for minors, who handle either beer or table wine, within the scope of their employment. §28-3A-25(a)(19)

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §6-5-71[1]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Buchanan v. Merger Enterprises, Inc.*, 463 So.2d 121 (1984)
Dram Shop Actions-Social Hosts:	**Yes Limited** A social host can be held liable for the actions of intoxicated minors. *Martin v. Watts,* 508 So.2d 1136 (Ala. 1987)[2], *Williams v. Reasoner,* 668 So.2d 541 (Ala. 1995), *DeLoach v. Mayer Electric Co.*, 378 So.2d 733 (1979), *Beeson v. Scoles Cadillac Corp.*, 506 So.2d 999 (1987)[3] The *Deloach* and *Beeson* cases involved "business" social host situations. Note: In both the *Martin* and *Williams* cases, the court held that the social hosts were not liable for third party injuries because the host did not provide alcoholic beverages to the injury causing guest.
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	See Double Jeopardy on p. 3-8.
Type of Criminal Action:	See Regulation 20-X-6-.02 which prohibits the sale of alcoholic beverages to persons "acting in a manner as to appear to be intoxicated." Reg. promulgated via §28-3-49.[4] It is a **misd.** to violate a regulation (§28-3-20).
Imprisonment:	Not more than **6 mos** §28-3-20[5]
Fine ($ Range):	Not more than **$500** §28-3-20[5]

[1]**Comment:** Sec. 6-5-71, the Dram Shop Law provision that applies to commercial servers, referrers to the selling of "liquor" ("spirituous liquor"). In Alabama, as well as other State statutes that use this term, an issue arises from time to time as to whether the terms "spirituous liquor" or "liquor" include other types of alcoholic beverages (e.g., beer and wine) or whether they should be restricted to meaning "distilled spirits" only. Under a related provision, §6-5-70, parents of children who have been injured (or killed) as a consequence of the sale of "liquor" to the minor may bring a cause of action for damages against those responsible for such sale. *Adkison v. Thompson,* 650 So.2d 859 (Ala. 1994) Note: In interpreting the term "spirituous liquor" (really "liquor") in §6-5-70, the Alabama Supreme Court held, that for the purpose of this section, the term "spirituous liquor" includes beer, wine and other alcoholic beverages. *Espey v. Convenience Marketers,* 578 So.2d 1221 (Ala. 1991) **Comment:** It would seen likely this court would apply this same interpretation to §6-5-71.

[2]Note: This same case is also reported at 513 So.2d 958.

[3]The court held that the Dram Shop Act, §6-5-71, does not apply to social host situations where alcoholic beverages are not sold and are not given contrary to law (e.g., alcoholic beverages were not given to minors.). *Smoyer v. Birmingham Area Chamber of Commerce,* 517 So.2d 585 (Ala. 1987)

[4]The legislature repealed the law, §28-3-260(2), that prohibited the sale of alcoholic beverages to visibly intoxicated persons. Acts of 1980, No. 80-529, p. 806 §27 Reg. 20-X-6-.02 was promulgated as a substitute for this repealed law.

[5]See §28-3-19 which also makes it a misd. to violated alcoholic beverage control regulations. The sanctions for this offense are a fine of $100 to $200 and/or imprisonment for not more than 90 days.

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	See Double Jeopardy below.
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §§28-3A-24 & 28-3A-26
Length of Term of License Withdrawal:	1st off-susp for not more than **1 yr** or rev for **1 yr**[1]; 2nd or sub. off-rev for **1 yr** (This rev appears to be mand under §28-3A-26; however, see §28-3A-24(c) which authorizes a fine in lieu of rev.[1]) §§28-3A-24 & 28-3A-26
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	See Double Jeopardy below.
Type of Criminal Action:	1st off - **Misd**; 2nd off - **Misd**; 3rd and subsequent Off - **Misd** §28-3A-25(a)(3)
Term of Imprisonment:	1st off - Not more than **6 mos**; 2nd off - **3 to 6 mos**; 3rd and subsequent off **6 to 12 mos** §28-3A-25(b)(1)
Fine ($ Range):	1st off - **$100 to $1,000**; 2nd off - **$100 to $1,000**; 3rd and subsequent off - **$100 to $1,000** §28-3A-25(b)(1)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	See Double Jeopardy and the Special Note below.
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §§28-3A-24 & 28-3A-26
Length of Term License Withdrawal:	1st off **Susp-Not more than 1 yr; rev-1 yr**[1]; 2nd and subsequent off - **Rev-1 yr** (This rev appears to be mand. under §28-3A-26; however, see §28-3A-24(c) which authorizes a fine in lieu of rev.[1]) §§28-3A-24(d) & 28-3A-26
Anti-Happy Hour Laws/Regulations:	**Yes** Regulation 20-X-6-.14
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**No**

[1]In lieu of a license susp/rev, an administrative fine of not more than $1,000 may be imposed. §28-3A-24(c)

Double Jeopardy. Under certain circumstances, using constitutional principles of double jeopardy, a person, who has been prosecuted for a criminal violation of the alcoholic beverage control laws, cannot be assessed a civil fine for the same offense. *Crump v. Alabama Alcoholic Beverage Control Board,* 678 So.2d 133 (Ala.Civ.App. 1995) (cert. den. by the Alabama Supreme Court, 678 So.2d 140)

Special Note: If a licensee has been certified as a "responsible vendor," they may be exempt from either license susp or rev if an employee sells/serves alcoholic beverages to an under age person. In addition, such certification may be used to mitigate any administrative fine that may be imposed. §28-10-7 A "responsible vendor" is a licensee whose employees have undergone special training in how to prevent the sale or service of alcoholic beverages to under age persons. §28-10-1 et seq.

STATE:	**ALASKA**
General Reference:	Alaska Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor[1] §28.35.030(a)(1)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1,2&3] §28.35.030(a)(2)
Presumption (BAC/BrAC):	≥**0.10**[3] §28.35.033(a)(4)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **A Controlled Substance**[1] or (2) Intoxicating Liquor and Another Substance[1] §28.35.030(a)(1) & (3)
Other:	Persons Under 21 Years Old. See p. 3-11. For Commercial Motor Vehicle Operators, see p. 3-12.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §28.35.031(b) Also applies to CMV operators §28.33.031
Implied Consent Law: Arrest Required (Yes/No):	**Yes** §28.35.031 See the Special Note below.
Implied Consent Law Applies to Drugs (Yes/No):	**No** Except as noted in "Other Information" below.
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §§28.35.032(e) & 28.35.285(c)
Other Information:	A "chemical test" for either alcohol or a controlled substance may be administered to a person (or a CMV operator) without their consent if they have been arrested for a DWI off where there has been an accident involving death or physical injury to another person. §§28.35.035(a), 28.33.031(b) & *Municipality of Anchorage v. Ray,* 854 P.2d 740 (AlaskaApp. 1993)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**No** Except as per the Special Note below.
Urine:	**No** Except as per the Special Note below.
Other:	**None**

[1]The law defines the drunk driving offense as the crime of "driving while intoxicated" which includes driving while under the influence of intoxicating liquor/controlled substance or illegal per se at an alcohol concentration ≥0.10. §28.35.030
[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.
[3]Alcohol concentration is based upon either percent by wgt. of alc. in the blood, grams of alc. per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §28.35.030(a)(2) Note: Under §28.35.033(b), percent by wgt. of alc. in the blood is defined as grams of alcohol per 100 milliliters of blood.

Special Note: This State's implied consent law also requires that a driver submit to a chemical test or tests (1) of their breath or blood for alcohol content or (2) of their blood or urine for a controlled substance if there is "reasonable grounds to believe that the person was operating or driving a motor vehicle in this state that was involved in an accident causing death or serious physical injury to another person." The sanctions for violating this requirement are the same as for violating the regular implied consent provisions. §28.35.031(a), (f) & (g) Note: There is a similar provision for CMV operators; see p. 3-12. **Comment:** Similar provisions of other State laws have been found unconstitutional. See *King v. Ryan, Secretary of State,* 607 N.E.2d 154 (Ill. 1992), and *Commonwealth v. Kohl,* 615 A.2d 308 (Pa. 1992).

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** §§28.35.030(h) & 28.35.032(l)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	Infraction (non-criminal offense)-Not more than **$300** §§28.35.031(e) & 28.40.050(c) & (d)
Administrative Licensing Action (Susp/Rev):	**None**
Other:	Refusal to submit to a PBT may be admitted into evidence at either a criminal or civil proceeding. §28.35.031(c) Also applies to CMV operators. §28.33.031(d) It is a Cl B misd for a CMV operator to refuse to submit to a PBT. §28.33.031(f) The sanctions for this offense are as follows: Jail-not more than **90 dys**; fine-not more than **$1,000**. §§12.55.035(b)(4) & 12.55.135(b)
Refusal to Take Implied Consent Chemical Test:	See the "Note" under Double Jeopardy on p. 3-11.
Criminal Sanction (Fine/Jail):	Cl A misd-Not more than **1 yr** imprisonment/not mroe than **$5,000** fine; Cl C felony-if 3rd or subsequent refusal w/n 5 yrs-Not more than **5 yrs**/not more than **$50,000** fine §§12.55.035, 12.55.125, 12.55.135 and 28.35.032(f) & (q) Note: The jail and fine sanctions (including minimum mandatory sanctions), confinement in a community residential center, cost of incarceration (where applicable) for 1st and subsequent refusal offenses[1] are the same as for DWI offenses. These sanctions run concurrently with any other sanctions. §28.35.032(f) & (g)(4) See Footnote No. 2.
Administrative Licensing Action (Susp/Rev):	**Rev** §§28.15.165(a)(1) & 28.15.181(a)(8) 1st Refusal-**90 dys** (mand) License revocation periods, including the minimum mandatory periods, veh. forfeiture for 2nd and subsequent refusals[1] are the same as for 1st and subsequent revocations for DWI offense convictions. §§28.15.165(d)
Other:	**State Forfeiture** of the vehicle used in subsequent refusal offenses. This action is not mandatory. §28.35.036

[1]For either DWI offense convictions or for convictions for refusal to submit to a chemical test, a previous off is considered to be either a previous chemical test refusal or a previous DWI conviction. §§28.35.030(k)(4), 28.35.032(o) & 28.35.036(b)

[2]**Persons Under 21 Years Old.** A person > 14 but <21 yrs old commits an "infraction" if they refuse to submit to a chemical test after having been arrested for the offense of operating a motor vehicle after having consumed any quantity of alcohol. The sanctions for this offense are either a fine of not more than $1,000 or community service. Community service may be offered to the defendant as an alternative to all or part of the fine sanction. §28.35.285(d) In addition, the driver's license is revoked via an administrative procedure for the following mandatory periods: 1st revocation-90 dys; 2nd revocation-1 yr; and, 3rd revocation-3 yrs. §28.15.183(d)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 1, Electronic Monitoring and Double Jeopardy below.
Imprisonment/Fine:	I. Cl A Misd-Not more than **1 yr**/not more than **$5,000** II. Cl C felony if 3rd or subsequent offense w/n 5 yrs-Not more than **5 yrs**/not more than **$50,000** §§12.55.035, 12.55.125, 12.55.135 & 28.35.030
Mandatory Minimum Term:	I. Cl A Misd offs: 1st off-**72 cons hrs**[2]; 2nd off (w/n 10 yrs)-**20 dys**[2]; 3rd off (w/n 10 yrs but more than 5 yrs)-**60 dys**; 4th off (w/n 10 yrs but more than 5 yrs)-**120 dys**; 5th off (w/n 10 yrs but more than 5 yrs)-**240 dys**; 6th and sub. off (w/n 10 yrs but more than 5 yrs)-**360 dys** II. Cl C felony offs: 3rd off (w/n 5 yrs)-**120 dys**; 4th off (w/n 5 yrs)-**240 dys**; 5th and sub. off (w/n 5 yrs)-**360 dys** §§28.35.030(b) & (n) and 28.35.032(g) & (p) Important. See Electronic Monitoring below.
Mandatory Minimum Fine ($):	I. Cl A misd offs: 1st off-**$250**; 2nd off (w/n 10 yrs)-**$500**; 3rd off (w/n 10 yrs but more than 5 yrs)-**$1,000**; 4th off (w/n 10 yrs but more than 5 yrs)-**$2,000**; 5th off (w/n 10 yrs but more than 5 yrs)-**$3,000**; 6th and sub. off (w/n 10 yrs but more than 5 yrs)-**$4,000** II. Cl C felony offs (3rd or sub off w/n 5 yrs)-**$5,000**
Other Penalties:	
Community Service:	**Yes**[3] 1st off-At least **24 hrs**; 2nd off-At least **160 hrs** §§28.35.030(k) & 28.35.032(o) Discretionary for subsequent offenses §12.55.055
Restitution (eg Victim's Fund)	**Yes** The court may order a defendant to pay direct compensation to a victim(s). §12.55.045

[1]For either DWI offense convictions or for convictions for refusal to submit to a chemical test, a previous off is considered to be either a previous chemical test refusal or a previous DWI conviction. §§28.35.030(k)(4), 28.35.032(o) & 28.35.036(b)
[2]If possible, this incarceration sentence is to be served in a community residential center. §§28.35.030(l) & 28.35.032(p)
[3]This community service is not an alternative to the mandatory minimum terms of imprisonment. For 3rd and subsequent offenses, the length and type of community service is discretionary with the court.

Persons Under 21 Years Old. A person ≥14 but <21 yrs old commits an "infraction" if either (1) they operate a motor vehicle after having consumed any quantity of alcohol or (2) they operate a motor vehicle w/n 24 hrs after having either been cited for or refused to submit to a chemical test for such offense . The sanctions for these offenses are either a fine of not more than $1,000 or community service. Community service may be offered to the defendant as an alternative to all or part of the fine sanction. §§28.35.280(a) & (d) and 28.35.290(a) & (d) In addition, for the offense of operating a motor vehicle "after having consumed any quantity of alcohol", the driver's license is revoked via an administrative procedure for the following mandatory periods: 1st revocation-90 dys; 2nd revocation-1 yr; and, 3rd revocation-3 yrs. §28.15.183(d)

Electronic Monitoring. A person, who is ordered to serve a definite term of imprisonment, may be allowed to serve all or part of this term by "electronic monitoring". §12.55.015(e)(2) **Comment:** This provision may have abrogated "mandatory" imprisonment.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Zerkel,* 900 P.2d 744 (AlaskaApp. 1995) Note: Likewise, a person, who has first been subjected to administrative licensing action for refusing to submit to a chemical test under the implied consent law, may also be subsequently prosecuted, under this law, for the criminal offense of refusing to submit to such a test. This subsequent criminal trial does not constitute double jeopardy. *Arron v. City of Ketchikan,* 927 P.2d 335 (AlaskaApp. 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	**Ignition Interlock.** As a condition of probation, if granted, the court may order a defendant to only operate motor vehicles equipped with "ignition interlock" devices. However, mandatory licensing sanctions still apply. §12.55.102(a) **Incarceration Costs.** Except for indigent defendants, an offender may be required to pay the cost of their incarceration. However, such cost is limited to a maximum of $1,000. §§28.35.030(k) & 28.35.032(o) **EMS, Police, Fire Department Costs.** A defendant may be ordered to pay the reasonable costs of any "emergency response" associated with an accident related to the drunk driving offense. An "emergency response" includes emergency medical, law enforcement and fire department services. §28.35.030
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	On p. 3-11, see Persons Under 21 Years Old and Double Jeopardy.
Administrative Per Se Law:	**Yes** ≥**0.10** (BAC/BrAC See Footnote No. 3 on p. 3-9.) §28.15.165(a)(1) & (d) Licensing revocation periods, including the minimum mandatory periods, for 1st and sub admin. actions are the same as for 1st and sub revocations for DWI off convictions.
Other:	**None**
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	**Rev** §28.15.181(a)(5) & (c)
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-Not less than **90 dys**; 2nd off (w/n 10 yrs)-Not less than **1 yr**; 3rd off (w/n 10 yrs)-Not less than **3 yrs**; 4th and sub. off (w/n 10 yrs)-Not less than **5 yrs** §28.15.181(c) See Footnote No. 1 on p. 3-11.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have either a percent by wgt. of alc. in the blood ≥0.04, a blood alcohol concentration ≥40 milligrams of alcohol per 100 milliliters of blood, or a breath alcohol concentration of ≥0.04 grams of alc. per 210 liters of breath, (2) are under the influence of intoxicating liquor or any controlled substance or (3) refuse to submit to a breath test. For either (1) a second violation or (2) a combination of two violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). For either (1) a subsequent violation or (2) a combination of more than two violations of any of the above listed items, there is a mandatory lifetime "disqualification". A person, who operates a CMV with a BAC/BrAC ≥0.04, while under the influence of any controlled substance or who refuses to submit to a breath test, is also subject to the regular DWI/implied consent law criminal and administrative (licensing) sanctions; this includes all mandatory sanctions. In addition, a CMV operator who has any "measurable" or detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. **Special Note:** This State's CDL implied consent law also requires that a CMV operator submit to a chemical test or tests (1) of their breath or blood for alcohol content or (2) of their blood or urine for a controlled substance if there is "reasonable grounds to believe that the person was operating or driving a motor vehicle in this state that was involved in an accident causing death or serious physical injury to another person." §§28.15.165, 28.15.219, 28.33.030, 28.33.031(a)(1) & (2), 28.33.130, 28.33.140 and 28.35.032(f)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of Withdrawal:	1st off-**90 dys** or **30 dys** followed by a limited occupational license for 60 dys with participation in an alcohol education and treatment program §28.15.201(d); 2nd off (w/n 10 yrs)-**1 yr**; 3rd off (w/n 10 yrs)-**3 yrs**; 4th and sub. off (w/n 10 yrs)-**5 yrs**
Other:	
Rehabilitation:	
Alcohol Education:	**Yes**[1] §28.35.030(c)
Alcohol Treatment:	**Yes**[1] §28.35.030(c)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Yes State Forfeiture** of the vehicle used in subsequent DWI offenses. This action is not mandatory. §28.35.036
Terms Upon Which Vehicle Will Be Released:	**N/A**
Other:	**Local Forfeiture.** Under §28.35.038, municipalities may enact ordinances to impound/forfeit motor vehicles for violations of local DWI/chemical test refusal laws.
Miscellaneous Sanctions Not Included Elsewhere:	**None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**No**[2]
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	
Mandatory Minimum Term:	
Fine ($ Range):	
Mandatory Minimum Fine:	
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	See Footnote No. 3.
Length of Term of Licensing Withdrawal:	

[1]For any DWI or refusal conviction, a defendant may be required to complete either an alcohol education or an alcohol treatment program that the court feels is appropriate for that defendant before their license can be restored. §28.15.211(d) A defendant may participate in this rehabilitation program either while incarcerated or while on probation. §§12.55.015(a)(10), 12.55.100(a)(5), 28.35.030(j) & 28.35.032(m)

[2]In some circumstances, a DWI related death may be considered second degree murder. *Puzewicz v. State,* 856 P.2d 1178 (AlaskaApp. 1993)

[3]Even though this State does not have a veh homicide statute, it, nevertheless, provides for license rev for a conviction of manslaughter resulting from the operation of a motor vehicle. §28.15.181(a)(1) & (b)

Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum Length of License Withdrawal:	
Other:	
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. 1.
Sanction:	
Criminal:	
Imprisonment (Term):	Class A Misd-Not more than **1 yr** §§12.55.135(a) & 28.15.291
Mandatory Minimum Term of Imprisonment:	**10 dys** Also a mandatory period of 80 hrs of community service. §28.15.291(b)(1)(C) & (b)(3).
Fine ($ Range):	Not more than **$5,000** §§12.55.035(b)(3)
Mandatory Minimum Fine:	**$500** §28.15.291(b)(1)(C) & (b)(3).
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Rev** §28.15.291(b)(4)
Length of Term of License Withdrawal Action:	Original rev **extended not less than 90 dys**
Mandatory Term of License Withdrawal Action:	Original rev **extended not less than 90 dys**
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

[1]It is Cl A misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term ≤1 yr or a fine ≤$5,000. The following mand sanctions are imposed: 1st offense, jail for 20 dys (10 dys suspended) plus not less than 80 hrs of community service; and, a subsequent offense (w/n 10 yrs), a 60 dy jail term and a fine of $1,000. And, for both 1st and subsequent offenders, driving privileges cannot be restored for an additional 90 dys. §§12.55.035, 12.55.135 and 28.33.150(a)(4), (a)(5), (b)(4) & (c)

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1983) §§04.16.051, .052 & .060
Minimum Age (Years) Possession:	**21** There are exemptions for parents or physicians furnishing alcoholic beverages to minors. §§04.16.050, .051 & .052
Minimum Age (Years) Consumption:	**21** There are exemptions for parents or physicians furnishing alcoholic beverages to minors. §§04.16.050, .051 & .052
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** I. Persons Who Hold Licenses Under the Alcoholic Beverage Law-The law limits liability to situations where a licensee has served alcoholic beverages either (1) to a person under 21 years old or (2) to a drunken person in a "criminally negligent" manner. §§04.16.030, 04.21.020(a) & 04.21.080(a)(1)[1&2] II. Alcoholic Beverage Law Violators-Persons, who serve alcoholic beverages to individuals without obtaining the appropriate licensees, are "strictly liable" for the injuries caused by such individuals, while in an intoxicated condition, after they consume such beverages. §04.21.020(b)
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** Note: Previous case, *Nazareo v. Urie,* 638 P.2d 671 (Alaska 1981), was indirectly abrogated by the dram shop statute.
Dram Shop Actions-Social Hosts:	**No**[3] §04.16.020 & *Mulvihill v. Union Oil Co.,* 859 P.2d 1310 (Alaska 1993)
Other:	Alcoholic Beverage Law Violators-Persons, who serve alcoholic beverages to individuals without obtaining the appropriate licensees, are "strictly liable" for the injuries sustain by such individuals, while in an intoxicated condition, after they consume such beverages. §04.21.020(b)

[1]*Kavorkian v. Tommy's Elbow Room, Inc.,* 694 P.2d 160 (Alaska 1985) (rehearing, 711 P.2d 521 (Alaska 1985)).
[2]The dram shop law, §04.21.020(a), has been held constitutional. *Gonzales v. Safeway Stores, Inc.,* 882 P.2d 389 (Alaska 1994)
[3]Under §04.21.020(a), a social host is not liable for the injuries sustained by an intoxicated guest. *Chokwak v. Worley,* 912 P.2d 1248 (Alaska 1996)

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Cl A misd §§04.16.030 & 04.16.180
Term of Imprisonment:	Not more than **1 yr** §12.55.135(a)
Fine ($ Range):	Not more than **$5,000** §12.55.035(b)(3) For organizations, the fine is not more than $200,000. §12.55.035(c)(1)(B)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** §04.16.180
Length of Term of License Withdrawal:	1st conviction-**45 day susp**; 2nd conviction-**90 day susp**; 3rd and/or subsequent convictions-**Discretionary** No time limit is given in the statute. Note: The susps and revs are not mandatory. §04.16.180
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	Cl A Misd §§04.16.052 & 04.16.180
Term of Imprisonment:	Not more than **1 yr** §12.55.135(a)
Fine ($ Range):	Not more than **$5,000** §12.55.035(b)(3) For organizations, the fine is not more than $200,000. §12.55.035(c)(1)(B)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** §04.16.180
Length of Term License Withdrawal:	1st conviction-**45 day susp**; 2nd convictions-**90-day susp**; 3rd and/or subsequent convictions-**Discretionary** No time limit is given in the statute. Note: The time limitations are not mandatory.
Anti-Happy Hour Laws/Regulations:	**Yes** §04.16.015
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** Applies only to drivers §28.35.029
Anti-Consumption Law (Yes/No):	**Yes** Drivers only 13 Alaska Administrative Code 02.545(a)

JURISDICTION:	**AMERICAN SAMOA**
General Reference:	American Samoa Code Annotated (Updated through 1987)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §22.0707(a)
Illegal Per Se Law (BAC):	**None**
Presumption (BAC):	≥**0.08** §22.0607(a)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Narcotic Drug or (2) **Any Other Drug** §22.0707(a)
Other:	

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §22.0601
Implied Consent Law Applies to Drugs (Yes/No):	**No**
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §22.0603
Other Information:	

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §22.0601
Urine:	**Yes** §22.0601
Other:	**Saliva** §22.0601

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Yes Limited** A DWI charge cannot be plea bargained to a lessor offense if the alcohol offense was related to an accident that caused either vehicle damage or personal injury. §22.0707(b)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**[1]

Sanction for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Suspension/Revocation):	**N/A**
Other:	

[1]For general PSI provisions, see §46.1908. There are no specific alcohol screening requirements.

Sanction for Refusal to Submit to a Chemical Test: (continued)

Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Suspension/Revocation):	**Susp 90 dys** (Appears to be mandatory) §22.0608
Other:	

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	**Class A Misd**-Not more than **1 yr** §§22.0707 & 46.2301(5)
Mandatory Minimum Term:	**None**
Fine:	
Amount ($ Range):	Not more than **$1,000** §46.2102(a)(1)
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	
Restitution (eg Victim's Fund):	**Yes** Paid by the defendant to a victim §§46.2001 & 46.2002
Other:	
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Suspension/Revocation):	**Susp/Rev** (for all offenses) §22.0211 See Footnotes Nos. 1, 2 & 3.
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**6 mos**; 2nd off-**2 yrs**; 3rd off-**Permanently** §22.0211
Mandatory Minimum Term of Withdrawal:	1st off-**6 mos**; 2nd off-**2 yrs**; 3rd off-**Permanently**

[1]The driver's license may be permanently revoked for any DWI offense if it is shown that the driver has a "drinking pattern which indicates that [they] cannot safely operate a motor vehicle." §22.0211(a)(4)
[2]The suspension period may be doubled if the defendant has caused either an injury or a death to another person. 22.0211(b)
[3]Either suspension or revocation for the periods indicated.

Sanctions Following a Conviction for a DWI Offense: (continued)

Other:
Rehabilitation:
Alcohol Education:
Alcohol Treatment:

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

Miscellaneous Sanctions
Not Included Elsewhere:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

Jurisdiction Has Such a Law:	**Yes Felony** §§22.0706, 22.0708 & 46.3102(b)[1]
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **5 yrs** §§22.0706 & 22.0708
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$5,000** §§22.0706 & 22.0708
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Susp or Rev** §22.0203 See Footnotes Nos. 2, 3 and 4.
Length of Term of Licensing Withdrawal:	1st off-**180 dys**; 2nd & sub off-**2 yrs** See Footnote Nos. 2 & 4.
Mandatory Action--Minimum Length of License Withdrawal:	**None**
Other:	

[1]Sec. 22.0708 concerns a death related to a DWI offense whereas §22.0706 concerns a death caused by the operation of a vehicle for other traffic law violations. However, the criminal sanctions for a violation of these sections are the same.
[2]The suspension period may be doubled. §22.0213(b)
[3]Either suspension or revocation for the periods indicated.
[4]These susp/revs apply only to violations of §22.0706. For violations of §22.0708, see Administrative Licensing Actions for a Post DWI Offense Conviction and Footnote No. 2 on p. 3-18.

Other Criminal Actions Related to DWI: (continued)

Driving While Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	
Imprisonment:	**Class D Felony** Not more than 5 yrs §§22.0233 & 46.2301(4)
Mandatory Minimum Term of Imprisonment:	**90 dys** §22.0223
Fine ($ Range):	Not more than **$5,000** §46.2101(a)(1)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Suspension/Revocation):	**Susp** §22.0219
Length of Term of License Withdrawal Action:	If convicted of driving while suspended, extend the period of susp. for a like period (unless otherwise directed) §22.0219
Mandatory Term of License Withdrawal Action:	If convicted of driving while suspended, extend the period of susp. for a like period (unless otherwise directed) §22.0219
Other:	
Habitual Traffic Offender Law:	
Jurisdiction Has Such a Law (Yes/No):	**No** Note: This jurisdiction does not have a per se habitual traffic offender law. However, the law does provide for permanent license revocation if a person has been convicted of 3 serious traffic offenses (e.g., DWI) w/n 10 yrs. §§22.0213(a)(3)
Grounds for Being Declared an Habitual Offender:	
Term of License Revocation While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**None**
BAC Chemical Test Is Given to the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Sales Only) (Year Eff: 1961) §27.0531(a)(1)
Minimum Age (Years) Possession:	**None**
Minimum Age (Years) Consumption:	**None**
Dram Shop Laws and Related Legal Actions:	
Jurisdiction Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the Case (Case Citation):	n.a.
Dram Shop Actions-Social Hosts:	
Other:	
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Class B Misd** §§27.0531 & 27.0534
Term of Imprisonment:	Not more than **6 mos** §46.2301(6)
Fine ($ Range):	Not more than **$500**[1] §46.2102(a)(2)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §27.0533
Length of Term of License Withdrawal:	1st off-**30 dy susp**; 2nd off-**60 dy susp**; 3rd off-**Rev** Note: The period of revocation is not specified in the statute.

[1]For corporations, the fine is not more than $2,000. §22.2103(a)(3)

Other laws Related to Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:	**Class B Misd** §§27.0531 & 27.0534
Term of Imprisonment:	Not more than **6 mos** §46.2301(6)
Fine ($ Range):	Not more than **$500**[1] §46.2102(a)(2)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §27.0533
Length of Term License Withdrawal:	1st off-**30 dy susp**; 2nd off-**60 dy susp**; 3rd off-**Rev** Note: The period of revocation is not specified in the statute.

Anti-Happy Hour Laws/Regulations: **None**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):	**Yes** §27.0532
Anti-Consumption Law (Yes/No):	**Yes** (Driver and passengers) §27.0532

[1]For corporations, the fine is not more than $2,000. §22.2103(a)(3)

Special Note: The definitions for "alcoholic beverage" and "beer" are as follows. "Alcoholic Beverage means beer, distilled spirit, wine or liquor which contains eight percent or more alcohol by weight". §27.0501(1) However, beer is defined as having an alcoholic content less than eight percent alcohol by weight. §7.0501(6)

STATE:	**ARIZONA**
General Reference:	Arizona Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §28-1381(A)(1)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1&2] and **Any Controlled Substance in a Person's Body**[3&4] §28-1381(A)(2) & (3) ≥**0.18**[5] §28-1382(A) Persons Under 21 Years Old. Operating a motor vehicle with any **"Spirituous Liquor"** in their body. §§4-244(34) & 4-246(B)
Presumption (BAC/BrAC):	≥**0.10**[2] §28-1381(G)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**, a vapor releasing substance containing a toxic substance or (2) a combination of liquor, drugs or toxic vapor releasing substance if the person is impaired to the slightest degree. §28-1381(A)(1)
Other:	For Commercial Motor Vehicle Operators, see p. 3-27.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §28-1322 Based on reasonable suspicion of a DWI offense.
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[6] §28-1321(A)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §28-1321(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §28-1388(D)
Other Information:	I. Persons (e.g, medical facility personnel), who collect blood, urine or other bodily substances from drivers, may be requested by law enforcement authorities to supply samples of such substances to them for testing. §28-1388(E) II. Blood or urine samples can also be obtained via search warrants. §28-1321(D)(1)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §28-1321
Urine:	**Yes** §28-1321
Other:	**"Other bodily substances"** §28-1321

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.
[2]Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §28-101(2)
[3]A person is not guilty of operating a motor vehicle with a controlled substance in their body if they are legally entitled to use these drugs. §28-1381(D) Nevertheless, it is still illegal under §28-2881(A)(1) for such a person to operate a motor vehicle while under the influence of such substances. §28-1381(B)
[4]The illegal per se provision (previously codified as §28-692(A)(3)), that prohibits the operation of a motor vehicle with a controlled substance in the body, was held to be constitutional. *State v. Phillips,* 873 P.2d 706 (Ariz.App. 1994), & *State v. Hammonds,* 1998 Ariz. App. LEXIS 65, ____ P.2d ____ (Ariz.App. 1998)
[5]Operating a motor vehicle at or above this level is considered to be driving "while under extreme influence of intoxicating liquor." §28-1382(A)
[6]A law enforcement office can request a driver to submit to a chemical test if they are involved in an accident that caused either a death or a serious physical injury and there is "probable cause to believe" that the driver (1) either caused the accident or (2) the driver was issued a citation for a drunk driving offense. §28-1321(A)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Yes** §28-1387(H)[1]
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol Screening §28-1387(B)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal-**12 mo susp** (mand); sub refusal (w/n 60 mos)-**2 yr susp** (mand) §28-1321
Other:	A person under 21 years old, who has been arrested for a violation of §4-244(34) (driving with any amount of "spirituous liquor" in their body) is subject to the implied consent law. §28-1321(A)(1)(b)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Child Endangerment and Double Jeopardy below. Important: For persons under 18 yrs old, see Miscellaneous Sanctions on p. 3-28.
Imprisonment/Fine/Term:	I. 1st off-Cl 1 misd-**Not more than 6 mos** (with 10 con dys), **Not more than $2,500**; 2nd off[2](w/n 60 mos)-Cl 1 misd-**Not more than 6 mos** (with 90 dys), **not more than $2,500** II. 0.18 Offense-1st off-Cl 1 misd-**Not more than 6 mos** (with 30 con dys), **Not more than $2,500**; 2nd off[2] (w/n 60 mos)-Cl 1 misd-**Not more than 6 mos** (with 120 dys), **not more than $2,500**

[1]"Except for another violation of the this article [the drunk driving law provisions], the state shall not dismiss a charge of violating any provision of this article unless there is an insufficient legal or factual basis to purse that charge." §28-1387(H)

[2]For sentence enhancement purposes, a prior off includes any previous drunk driving offense.

Child Endangerment. A person commits a Cl 6 felony (Aggravated DWI), if they violate the drunk driving laws while transporting a passenger who is <15 yrs old. Sanctions: Imprisonment-1st Off-1 yr; with one prior felony conviction-1 to 2.5 yrs; with two or more prior felony convictions-3 to 4.5 yrs; fine-$150,000. Minimum Sanctions: For 1st & 2nd offs the minimum sanctions for drunk driving offenses apply. The minimum applicable sanction will depended on whether the offender was convicted under §28-1381 or §13-1382 (0.18 offense); and, for 3rd or sub offenses, the minimum sanctions are the same as for multiple offenses under the Aggravated DWI law. §§13-604(A), (C) & (U)(1)(a), 13-701(C), 13-801, and 28-1383(A)(3), (A)(4), (F), (G) & (L)(2)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Nichols,* 819 P.2d 995 (Ariz.App. 1991), & *Snow v. Superior Court of Arizona,* 903 P.2d 628 (Ariz.App. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

	III. **Aggravated DWI***-Cl 4 felony-**2½ to 12 yrs**[1]**, not more than $150,000** §§13-604, 13-701, 13-707, 13-801, 13-802, 28-1381, 28-1382 & 28-1383 **Special Note:** For sanctions related to Aggravated DWI based on a DWI offense and vehicle operation while suspended or revoked for DWI, see "Driving While Suspended or Revoked Where the Basis Was a DWI Offense" on p. 3-28. Persons Under 21 Years Old. Operating a motor vehicle with any **"Spirituous Liquor"** in their body. Cl 1 misd-**Not more than 6 mos/not more than $2,500** §§4-244(34) & 4-246(B), 13-701, 13-707, 13-801 & 13-802
Mandatory Minimum Term:	I. 1st off-**24 cons hrs**[2] §28-1381(J) 2nd off[3] (w/n 60 mos)-**30 con dys**[2] §28-1381(L) II. 0.18 Offense-1st off-**10 con dys**[2] §28-1382(E); 2nd off[3] (w/n 60 mos)-**60 con dys**[2] §28-1382(H) III. Aggravated DWI*-3rd off (w/n 60 mos)-**4 mos**[4] §28-1383(D); 4th and sub. off (w/n 60 mos)-**8 mos**[4] §28-1383(E) Persons Under 21 Years Old. Operating a motor vehicle with any **"Spirituous Liquor"** in their body. **None**
Mandatory Minimum Fine ($):	I. 1st off Cl 1 misd-**$250**; 2nd off Cl 1 misd (w/n 60 mos)-**$500**; II. 0.18 Offense- Cl 1 misd-**$250** (and a $250 assessment); 2nd off Cl 1 misd (w/n 60 mos)-**$500** (and a $250 assessment) III. Aggravated DWI*- Cl 4 felony-**None** Persons Under 21 Years Old. Operating a motor vehicle with any **"Spirituous Liquor"** in their body. **None**
Other Penalties:	
Community Service:	1st & 2nd offs (including 0.18 offs)-**Yes**[5] Discretionary with the court The number of hrs is not specified in the law. §§28-1381(I)(3) & (K)(3) and 28-1382(D)(4) & (F)(4); 3rd and sub off-Community service cannot be assigned. §11-459(R)
Restitution (eg Victim's Fund):	**Yes** A victims' compensation fund §41-2407 Where there was an economic loss to a victim, the Court may order that all or any portion of the fine be allocated as restitution. §13-804
Other:	**Driver Training Course.** A person may be required to attend and successfully complete a driver training course. §28-1706

[1]Imprisonment sanctions for Cl 4 felony: 1st Off-2½ to 3 yrs; with one prior felony conviction-3 to 6 yrs; with two or more prior felony convictions-8 to 12 yrs. §§13-604(A), (C) & (U)(1)(a)
[2]Provided the defendant completes an alcohol/drug screening, counseling, education/treatment program.
[3]For sentence enhancement purposes, a prior off includes any previous drunk driving offense.
[4]A limited furlough may be granted. §31-233(B)
[5]1st offenders are eligible of community service after they have severed 24 con hrs in jail. 2nd offenders are eligible for community service after they have served 15 con dys in jail. §§9-499.07(N) & 11-459(M)

***Definition of Aggravated DWI Based on Prior Offenses.** "Within a period of sixty months commits a third or subsequent violation of section 28-1381 [regular DWI offense] or this section [§28-1383] or is convicted of a violation of section 28-1381 or this section and has previously been convicted of any combination of convictions of section 28-1381 or 28-1382 [0.18 offense] or this section...." §28-1383(A)(2)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)	**Probation (Discretionary).** 1st or 2nd offense (including 0.18 offenses)-Not more than 5 yrs; Aggravated DWI Offenses*-Not more than 10 yrs §13-902(B) **Assessments.** Under §§12-116.01 & 12-116.02, the court is to levy respectively penalty assessments of 47% and 13% of the fine imposed. These assessments may be waived if they would work a hardship on the offender or their family.
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-24.
Administrative Per Se Law:	**Yes ≥0.10** (BAC/BrAC See Footnote No. 2 on p. 3-23.) **Susp-Not less than 90 cons dy** (30 cons dys mand)[1] §28-1385(A) & (E) **Special Note:** The procedures of the admin. per se law also apply to persons who are under 21 years old and who have been arrested for a violation of §4-244(34) (driving with any amount of "spirituous liquor" in their body). **Comment:** The admin per se law does not appear to actually authorize a lic. susp. for a violation of §4-244(34). It may well be that the legislature intended to impose admin. per se license susps. for a §4-244(34) offense but the language used in the admin. per se law is not clear on this point.
Other:	Under §§28-3306(A)(1) and 28-3315(A), it may be "possible" to susp/rev a person's license for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., a 2nd DWI off). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev) and Term of License Withdrawal:	I. Except as noted in II, 1st off (including 0.18 offs)-**Susp-not less than 90 con dys nor more than 1 yr**[2]; 2nd off (including 0.18 offs)-**Rev-not more than 1 yr w/susp for not less than 90 con dys**[2]; Aggravated DWI offenses*-**Rev-3 yrs** II. Driving under the influence of a controlled substance or with any amount of a controlled substance in the body: 1st off or 2nd off (w/n 60 mos)-**Rev-not more than 1 yr w/susp for not less than 90 con dys**[2]; Aggravated DWI offenses*-**Rev-3 yrs** §§28-1381(K)(4), 28-1382(F)(5), 28-1383(J)(1), 28-1387(D), 28-3304(A)(2), (8) & (9) and 28-3315

[1]For an admin. per se violation, where there has not been (1) serious physical injury, (2) a prior drunk driving offense conviction w/n 60 mos or (3) a refusal to submit to a chemical test w/n 60 mos, the license suspension period is not less than 30 cons days (mandatory) and a restricted license for not less than 60 cons days. §28-1385(F)
[2]This licensing action does not apply to 1st and 2nd offenders who have been suspended pursuant to either the implied consent or the admin. per se laws. §28-1387(D)

*See the **Definition of Aggravated DWI Based on Prior Offenses** on p. 3-25.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Persons Under 18 Years Old. A person <18 yrs old, who is convicted of either a DWI offense or driving with any "spirituous liquor in their body, is subject a **susp for 2 yrs**. This licensing actions is in addition to any other sanctions that may be imposed. This action is not mandatory. Restricted driving privileges are available. §28-3320

Persons ≥18 but <21 Years Old. **Comment:** There appears to be no licensing sanction against a person, who is ≥18 but <21 years old and who operates a motor vehicle with any "spirituous liquor" in their body. §§4-244(34) & 4-246(B).

Mandatory Minimum Term of Withdrawal: ALL OFFENSES: 1st off-**90 con dys**[1&2] 2nd off-**90 con dys**[2] 3rd & sub off-**3 yrs**

Other:
Rehabilitation:
Alcohol Education: 1st or 2nd off-**Yes**[3] §28-1387(B)
Alcohol Treatment: 1st, 2nd, 3rd or sub. offs-**Yes**[3] §28-1387(B)
Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: **Forfeiture (Mandatory).** An offender's vehicle is forfeited for (1) a 3rd or subsequent DWI offense, (2) a DWI offense while transporting a child <15 yrs old or (3) a DWI off while their license is still suspended/revoked for a prior DWI off. §28-1384(A)

[1]For a drunk driving offense conviction, where there has not been (1) serious physical injury, (2) a prior drunk driving offense conviction w/n 60 mos or (3) a refusal to submit to a chemical test w/n 60 mos of the DWI offense, the license suspension period is not less than 30 cons dys (mandatory) and a restricted license for not less than 60 cons dys. §§28-1385(F) & 28-1387(E)
[2]This suspension does not apply to 1st or 2nd offenders who have been suspended pursuant to either the implied consent or admin. per se laws. §28-1387(D)
[3]If a defendant has been ordered to participate in either an alcohol education or treatment program, their license cannot be restored until they prove that they have completed such program. §28-3319(C)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (For standards, see Footnote No. 2 on p. 3-23.) or (2) are under the influence of intoxicating liquor or a controlled substance. For a subsequent violation, the "disqualification" is for life. A CMV operator is subject to the normal DWI sanctions. Under the regular DWI law, it is it is illegal per se for a person to drive a CMV with a BAC/BrAC ≥0.04. Also, a CMV operator is subject to the sanctions and procedures of the admin. per se law if they operate a CMV with a BAC/BrAC ≥0.04. (Again, for BAC/BrAC standards, see Footnote No. 2 on p. 3-23.) §§28-101(2), 28-101(7), 28-1301, 28-1381(A)(4), 28-1385(A)(2)(b), 28-1501(3) & (5) and 28-3312 The State has also adopted Federal CDL disqualification (which are similar to the above actions) and out-of service provisions via §28-5204(B). Under these provisions, a person holding a CDL must be placed "out-of-service" for 24 hrs if they operate a CMV with any measurable or detectable amount of alcohol in their system. 49 CFR 383.51 & 392.5

Sanctions Following a Conviction for a DWI Offense:
(continued)

Terms Upon Which Vehicle Will Be Released:	**N/A**
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**Home Detention (Work Release).** Only 1st and 2nd DWI offenders (including 0.18 offenders) are eligible for the "home detention" (or work release) program. However, before starting this program 1st offenders must complete 24 con hrs in jail and 2nd offenders must complete 15 con dys in jail. §§9-499.07(N) and 11-459(M) & (R) **Ignition Interlock.** 0.18 and Aggravated DWI Offenders may be required to operate motor vehicles that are equipped with "ignition interlock" devices prior to the reinstatement of their driving privileges. This requirement lasts for at least respectively 1 and 3 yrs. §§28-1382(G) & 28-1383(K) **Incarceration Costs.** All drunk driving law offender must be assessed the costs of their incarceration. The costs charged are based on the offender's financial capabilities. §28-1444 **EMS Costs.** A person convicted of a DWI offense, who as a result of such offense has negligently caused an accident that resulted in an emergency response, is liable for the expenses associated with the response. §28-1386(A) **Prison Furlough.** Available for 3rd & sub. offenders §31-233 **Drunk Driving Offenders (including 0.18 offenders) Under 18 Years Old.** 1st off-Incarceration for **24 con hrs**; sub off (w/n 60 mos)-Incarceration for **30 con dys** in a juvenile detention center or in the dept of juvenile corrections. In addition, 1st or sub offenders are subject to a fine of **$100 to $500** plus at least 80 hrs of community service. They must also undergo alcohol screening and may, depending upon the results of the screening, be required to attend an alcohol education or treatment program. §§8-232.01 and 8-343(A), (B) & (D)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**No**
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	
Mandatory Minimum Term:	
Fine ($ Range):	
Mandatory Minimum Fine:	
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Note: License rev for 3 yrs for any homicide resulting from the operation of a motor veh. §§28-1704(1) & 28-1715(D)(1)

Other Criminal Actions Related to DWI: (continued)

Length of Term of Licensing Withdrawal:	
Mandatory Action--Minimum Length of License Withdrawal:	
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. 1 below.
Sanction:	
Criminal:	
Imprisonment (Term):	Cl 1 Misd-**Not more than 6 mos** Cl 4 Felony-Any DWI off and driving on a susp/rev lic. for a previous DWI conviction[2] (Aggravated DWI)-**2½ to 12 yrs**[3] §§13-701, 13-707, 13-801, 13-802, 28-1716, 28-1383 & 28-3473(B)
Mandatory Minimum Term of Imprisonment:	Cl 1 Misd off-**48 cons hrs** §28-3473(B) Cl 4 Felony off-**4 mos** §28-1383(D)
Fine ($ Range):	Cl 1 Misd off-**Not more than $2,500** §13-802 Cl 4 Felony off-**Not more than $150,000** §13-801 **Assessments.** An offender is also subject to assessments which can be ≤60% of the fine imposed. §§12-116.01 & 12-116.02
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Cl 1 Misd off-For driving while suspended-**Susp** For driving while revoked-**Rev** §28-3473(D) Cl 4 Felony-**Rev** §28-1383(I)
Length of Term of License Withdrawal Action:	Cl 1 Misd off-**Susp** equal to original susp period not to exceed one yr form the date of reinstatement **Rev** for one additional yr of rev §28-3473(D) Cl 4 Felony-**3 yrs** §28-1383(I)
Mandatory Term of License Withdrawal Action:	Cl 1 Misd off-**Susp** equal to original susp period not to exceed one yr form the date of reinstatement **Rev** for one additional year §28-3473(D) Cl 4 Felony-**3 yrs** §28-1283(I)

[1]I. The law specifically provides that the sanctions given also apply to persons who operate a CMV during a CDL disqualification. II. The law provides for the following sanctions for a violation of an "out-of-service" order. A civil penalty of at least $1,000. §28-5241(B), (D)(1) & (F) In addition, a person is subject to the following CDL disqualification periods: 1st violation-90 dys (mand); 2nd violation (w/n 10 yrs)-1 yr (mand); and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand). If the violation involved the transportation of hazardous materials, the disqualification periods are as follows: 1st violation-180 dys (mand); and, 2nd or sub violation (w/n 10 yrs)-2 yrs (mand). §28-3312(B) & (C)

[2]See "Forfeiture" under Vehicle Impoundment/Confiscation on p. 3-27.

[3]Imprisonment sanctions for Cl 4 felony: 1st Off-2½ to 3 yrs; with one prior felony conviction-3 to 6 yrs; with two or more prior felony convictions-8 to 12 yrs. §§13-604(A), (C) & (U)(1)(a)

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:	
State Has Such Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §28-2642
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** §28-2642
Vehicle Passengers:	**No**
Pedestrian:	**No**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1985) §§4-101(16), 4-101(27) and 4-244(9) & (16)
Minimum Age (Years) Possession:	**21** There is an exemption for religious services or ceremonies. §§4-101(16), 4-101(27), 4-244(9) & 4-249
Minimum Age (Years) Consumption:	**21** There is an exemption for religious services or ceremonies. §§4-101(16), 4-101(27), 4-244(9) & 4-249

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §4-311[1&2]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Ontiveros v. Borak,* et al., 667 P.2d 200 (Ariz. 1983)[2], & *Brannigan et al. v. Ray Buck,* 667 P.2d 213 (Ariz. 1983)
Dram Shop Actions-Social Hosts:	**Yes (Limited)** Liability is limited to the actions of intoxicated minors. §§4-301, 4-312(B), *Estate of Hernandez v. Board of Regents,* 866 P.2d 1330 (Ariz. 1994)*, *Petolicchio v. Sanata Cruz County Fair,* 866 P.2d 1342 (Ariz. 1994), *Knoell v. Cerkvenik-Anderson Travel, Inc.,* 891 P.2d 861 (Ariz.App. 1994), *Bruce v. Chas Roberts Air Conditioning, Inc.,* 801 P.2d 456 (Ariz.App. 1990), & *Keckonen v. Robles,* 705 P.2d 945 (Ariz.App. 1985).
Other:	**None**[3]
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Cl 1 Misd** §§4-244(14) & 4-246(B)
Term of Imprisonment:	Not more than **6 mos** §13-707(A)
Fine ($ Range):	Not more than **$2,500** for individuals §13-802(A); not more than **$20,000** for businesses §13-803 **Assessments.** An offender is also subject to assessments which can be ≤60% of the fine imposed. §§12-116.01 & 12-116.02
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev**[4] §4-210(A)(9)
Length of Term of License Withdrawal:	Length of term not fixed

[1]The law, §4-311, limits liability to situations where the injury causing patron was either (1) "obviously intoxicated" or (2) "under the legal drinking age". Furthermore, §4-312(B) (declared unconstitutonal See Footnote No. 2.) provides that §4-311 is the exclusive remedy in dram shop actions.

[2]Under Article 18, §6 of the Arizona Constitution, a person has the right to a full recovery for any injuries sustained. However, §4-312(B) restricts an injured persons right to a full recovery in dram shop situations by providing that §4-311 is the exclusive remedy available at law. And, as noted above in Footnote No.1, this later provision restricts liability to certain factual situations. As a result, the Arizona Court of Appeals declared §4-312(B) unconstitutional and held that an injured party in a dram shop type action has the right to full recovery via common law negligence under *Ontiveros*. Accordingly, the court determined that the plaintiff did not have to establish that the injury causing patron was "obviously intoxicated". *Young through Young v. DFW Corp.,* 908 P.1 (Ariz.App. Div. 2 1995) (Review denied by the Arizona Supreme Court.) Note: Since the matter was not argued by the parties, the court, in *Young*, specifically stated that it would not address the issue of whether the restrictions contained in §4-311 are unconstitutional.

[3]Note: Sec. 4-312(A), which abolished commercial server liability in situations involving injuries sustained either (1) by a patron due to his/her own intoxication or (2) by a patron as the result of an accompanying intoxicated patron's actions, was declared in violation of the State's constitution. *Schwab v. Matley,* 793 P.2d 1088 (Ariz. 1990)

[4]In lieu of or in addition to either suspension or revocation, a licensee may be subject to a civil fine of $200 to $3,000. §4-210.01

*See remanded case on appeal to the State supreme court for the second time, *Estate of Hernandez v. Flavio,* 930 P.2d 1309 (Ariz. 1997).

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Cl 1 Misd**[1] §§4-244(9) & 4-246(B)
Term of Imprisonment:	Not more than **6 mos** §13-707(A)
Fine ($ Range):	Not more than **$2,500** for individuals §13-802(A); not more than **$20,000** for businesses §13-803 **Assessments.** An offender is also subject to assessments which can be ≤60% of the fine imposed. §§12-116.01 & 12-116.02
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev**[2] §4-210(A)(9)
Length of Term License Withdrawal:	Length of term not fixed
Anti-Happy Hour Laws/Regulations:	**Yes**[3] §4-244(24)
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Driver & passengers §§4-244(20), 4-244(22) & *State v. Castellano,* 784 P.2d 287 (Ariz.App. 1989)

[1]**Special Note:** In addition to the sanctions given, under separate provisions of the law, it is a Class 2 misdemeanor to give or furnish "spirituous liquor" to a person who is under 21 years old. The sanctions for this offense are a jail term of not more than 4 mos and/or a fine of not more than $750. §§4-244(16), 4-246(A), 13-707(A) & 13-802(B)

[2]In lieu of or in addition to either suspension or revocation, a licensee may be subject to a civil fine of $200 to $3,000. §4-210.01

[3]The Arizona Court of Appeals has held that the Anti-Happy Hour Law applies only to the number of drinks sold. This law does not limit the alcoholic content or size of such drinks. *Callender v. Transpacific Hotel Corp.,* 880 P.2d 1103 (Ariz.App. Div. 2 1993)

STATE:	**ARKANSAS**
General Reference:	Arkansas Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Intoxicated[1] §§5-65-102(1) & 5-65-103(a) For Persons Under 21 Years Old-Under the Influence[1] §5-65-303(a) See the Special Note below.
Illegal Per Se Law (BAC/BrAC):	**≥0.10**[2] §§5-65-103(b) & 5-65-204(a) For Persons Under 21 Years Old-**≥0.02 but <0.10**[2] §5-65-303(b) See the Special Note below.
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	**Any Intoxicant**[3] or **Controlled Substance**[1] §§5-65-102(1) & 5-65-103(a) For Persons Under 21 Years Old-Under the Influence[1] See the Special Note below.
Other:	For Commercial Motor Vehicle Operators, see p. 3-35.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[4] §§5-65-202 & 5-65-309(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §5-65-202
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *Weaver v. City of Fort Smith,* 777 S.W.2d 867 (Ark.App. 1989), *Spicer v. State,* 799 S.W.2d 562 (Ark.App. 1990), & *Medlock v. State,* 964 S.W.2d 196 (Ark. 1998)

[1]The term "intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination thereof. §5-65-102(1) The term "influence" means being controlled or affected by an alcoholic beverage or similar intoxicant or a combination thereof to a such a degree that a person's driving ability is altered or diminished even to the slightest degree. §5-65-302(1)

[2]For either an illegal per se offense or an administrative per se law violation, the law provides that the alcohol concentration standard is percent by weight of alcohol in the blood. §§5-65-103(b), 5-65-303(b) & 5-65-104 However, under the chemical analysis provisions of the implied consent law, §5-65-204(a), alcohol concentration means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

[3]The Arkansas Supreme Court has held that the term "any intoxicant" is not constitutionally void for vagueness. *Thornton v. State,* 883 S.W.2d 453 (Ark. 1994)

[4]A law enforcement officer can request a driver to submit to a chemical test (1) if the driver has been arrested for a DWI offense, (2) if the driver has been involved in an accident or (3) if, at the time of a DWI arrest, there is "reasonable cause to believe" that the driver is intoxicated or has a BAC ≥0.10. §5-65-202(a) A law enforcement officer can request a driver, who is under 21 years old, to submit to a chemical test (1) if the underage person has been arrested for any offense arising out of driving while under the influence or with a BAC ≥0.02 but <0.10, (2) if the underage person has been involved in an accident or (3) if a law enforcement officer has stopped the under age person based upon "reasonable cause to believe" that the underage person has been driving while under the influence or with a BAC ≥0.02 but <0.10. §5-65-309(a)

Special Note: Under §5-65-311(a), the sanctions for this offense are in addition to any other sanctions that may be applicable under other provisions of law. To complement this provision, §5-65-311(d) provides that a person under 21 years old may be prosecuted for a regular DWI offense if they have a BAC >0.05 but <0.10.

Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information:	Based upon probable cause of DWI offense related to an accident involving either a death or where there is reason to believe that a death may occur, a driver may be compelled to submit to a test of their blood, breath or urine for alcohol or drug presence and concentration. §5-65-208(a)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes**[1]
Urine:	**Yes**[1]
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**Yes**[2]
Anti-Plea Bargaining Statute (Yes/No):	**Yes**[2]
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** §5-65-109 Alcohol abuse assessment required in cases where the defendant has either pleaded guilty to or *nolo contendere* to a DWI offense or has been found guilty via a trial without a jury. Alcohol abuse assessment is discretionary in cases where the defendant has been found guilty via a jury trial.

Sanction for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**

[1]Note: The implied consent laws only apply to a test to determine the alcohol or controlled substances content of a person's blood. §§5-65-202(a) & 5-65-309(a)

[2]Persons charged with a DWI offense shall be tried on such charges or plead to such charges and no such charges shall be reduced. §5-65-107 However, for persons who are either convicted of or who have either pleaded guilty to or *non-contendere* to a 1st DWI offense, the court is prohibited from placing such persons on probation and later discharging the accused without adjudication after the probation period has been served. §5-65-108 For persons under 21 years old who have either pleaded guilty to or *nolo contendere* to a 1st offence of "driving while under the influence" or with a BAC of "≥0.02 but <0.10", the court is prohibited from placing such persons on probation prior to adjudication and discharging the accused without an adjudication of guilt and expunging the record. §5-65-308

Sanction for Refusal to Submit to a Chemical Test: (continued)

Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal-susp **180 dys**[1]; 2nd refusal (w/n 3 yrs)-susp **2 yrs** (mand); 3rd refusal (w/n 3 yrs)-rev **3 yrs** (mand); 4th or sub refusal (w/n 3 yrs)-rev **For Life** (mand) §§5-65-104(a)(4)(A)(iii), (a)(4)(B)(ii), (a)(4)(C)(ii) & (a)(4)(D)(ii) and 5-65-205 For Persons Under 21 Years Old who refuse to submit to a chemical test after being arrested for "driving while under the influnce" or with a BAC "≥0.02 but <0.10": 1st ref-susp **90 dys (mand) to 180 dys**[2]; sub. ref-susp **1 yr (mand) to 18 mos**[2] §5-65-310
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment Term/Fine:	1st off-**24 hrs to 1 yr/$150 to $1,000**[3]; 2nd off (w/n 3 yrs)-**7 dys-1 yr/$400 to $3,000**[3]; 3rd off (w/n 3 yrs)-**90 dys to 1 yr/$900 to $5,000**[3]; 4th and sub. offs (w/n 3 yrs)(Felony)-**1 to 6 yrs/$900 to $5,000**[3] §5-65-111 & 5-65-112

[1]A person is eligible for a restrict license based upon extreme and unusual hardship that the person must use a vehicle either (1) to go to and from a place of employment, (2) in the course of employment, (3) to and from an educational institution or (4) to and from an Alcohol Safety Education and Treatment Course. §5-65-120

[2]If the person under 21 years old is a nonresident, the suspension period is only 6 mos. §5-65-310(e)(1)

[3]Note: There is a special court cost of $250 for any person who either pleads guilty to or *nolo contendere* to or is found guilty of a DWI offense. §5-65-113

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are intoxicated or (3) refuse to submit to a chemical test for an alcohol concentration. (Note: The CMV implied consent provision, §27-23-115(a), applies to a test for both an alcohol concentration and drugs; however, the disqualification provision, §27-23-112, applies only to a refusal to submit to a test for an alcohol concentration.) For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). It is a Class B Misd. to operate a CMV while intoxicated or with a BAC/BrAC ≥0.04; sanctions: Jail-not more than 90 dys; fine-not more than $500 (§§5-4-201(b)(2) & 5-4-401(b)(2)). In addition, a person who has any alcohol in their system must be placed "out-of-service" for 24 hours. §§27-23-103, 27-23-111, 27-23-112, 27-23-113, 27-23-114 & 27-23-115 Under separate provisions of law, a person may have their CDL suspended for 1 yr if they are convicted of operating a CMV while under the influence of a controlled substance. §§27-16-915(a) & (b) and 27-23-112(a)

DWI Offenses Involving Motor Vehicles Used In Commerce and Regulated Under the State's Motor Carrier Act. A person commits a misdemeanor if they operate a motor vehicle regulated under this act while under the influence of (1) intoxicating liquor, (2) a controlled substance or (3) any substance that render the person incapable of safely operating a motor vehicle. The sanctions for this offense are as follows: 1st offense-Jail-None, Fine-$200 to $1,000; 2nd and subsequent offense-Jail-None, Fine-$500 to $1,000. §23-13-258 This law cannot abrogate or supersede the regular DWI law. I.e., a person must be charged with a violation of the DWI law in preference to this one. Note: Sec. 23-13-258 may also apply to CMV operators as noted above.

Sanctions Following a Conviction for a DWI Offense:
(continued)

	For Persons Under 21 Years Old who are conviced of "driving while under the influnce" or with a BAC of ≥0.02 but <0.10: 1st Off-**$100 to $500**; 2nd Off0[1]-**$200 to $1,000**; 3rd or sub. off[1]-**$500 to $2,000** §5-65-305(a) Note: There are no imprisonment sanctions associated with a conviction for these offenses.
Mandatory Minimum Term:	1st off-**None**; 2nd off (w/n 3 yrs)-**7 dys**; 3rd off (w/n 3 yrs)-**90 dys**; 4th & sub. off (w/n 3 yrs)-**1 yr** §5-65-111 See Footnote No. 2.
Mandatory Min. Fine ($):	1st off-**$150**; 2nd off (w/n 3 yrs)-**$400**; 3rd & sub. off (w/n 3 yrs)-**$900** §5-65-112 See Footnote No. 2. For Persons Under 21 Years Old who are conviced of "driving while under the influnce" or with a BAC of "≥0.02 but <0.10": 1st Off-**$100**; 2nd Off[1]-**$200**; 3rd or Sub. Off[1]-**$500** §5-65-305(a) **Comment:** The law is not clear as to whether the minimum fines for underage offenders are mandatory. **Special Note:** The sanctions that may be applied against a person under 21 years old, who is convicted of "driving while under the influence" or with a BAC of "≥0.02 but <0.10", are in addition to any other sanctions that may be applied against such an individual for any another offense committed under State law. §5-65-311(a)
Other Penalties:	
Community Service:	1st off **Yes** Public Service in lieu of imprisonment §5-65-111(a) Note: If a person is unable to pay a fine, they may be given community service as an alternative sanction. §5-65-114 For Persons Under 21 Years Old, who are convicted of "driving while under the influence" or with a BAC of ≥0.02 but <0.10 the court **shall** order such persons to "perform public service work of the type and for the duration as deemed appropriate by the court." §5-65-306
Restitution (eg, Victim's Fund)	**Yes** By the defendant (§§5-4-104(d)(4) & 5-4-205) and via crime victims' compensation funds (§§16-90-307 & 16-90-701 et seq.). For the fund established under §16-90-701 et seq, the maximum amount that may be paid is $10,000. §16-90-716(a)

[1]Note: a previous conviction also includes a convition under the regular DWI law. §5-65-305(b)

[2]Certain minimum sanctions for DWI offenses under §§5-4-104(e)(1)(D), 5-4-301(a)(1)(D), 5-65-111 & 5-65-112 are mandatory. §§5-65-108 & 16-90-107, *Lovell v. State,* 678 S.W.2d 318 (Ark. 1984), *Lovell v. State,* 681 S.W.2d 395 (Ark. 1984), *Harris v. State,* 686 S.W.2d 440 (Ark. 1985) and *Lawson v. State,* 746 S.W.2d 544 (Ark. 1988). **Comment:** A DWI offender has a statutory right to a jury trial. In such trials, the jury affixes punishment (criminal and administrative (licensing) sanctions). *Tharp v. State,* 745 S.W.2d 612 (Ark. 1988) Under §16-90-107, the jury or the court must sentence a person to the statutory minimum fine or jail/prison sanction provided by law for the offense committed.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	A defendant is required or may have to pay the following assessments or fees. (1) Under §16-90-718, a DWI defendant has to pay an assessment, as determined by the court, of from $25 to $10,000. This assessment is paid into the State's Crime Victims Reparations Revolving Fund. (2) Under §16-90-307, each circuit court can establish a separate victim's restitution fund. Persons convicted of any offense may be required by the court to pay a fee, which is not to exceed the amount of the "criminal penalty fine", into this separate fund. (3) And, under §5-65-113, a defendant is to pay "additional" costs of $250.
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes**[1] **BAC ≥0.10** (For standards, see Footnote No. 2 on p. 3-33.) or **While Intoxicated** (alcohol/drugs) 1st violation-susp **120 dys**[2] (susp 6 mos[2] if based on driving while intoxicated by a controlled substance); 2nd violation (w/n 3 yrs)-susp **16 mos** (mand); 3rd violation (w/n 3 yrs)-rev **30 mos** (mand); 4th or sub violation (w/n 3 yrs)-rev **4 yrs** (mand) §§5-65-104(a)(4)(A)(i) & (ii), (a)(4)(B)(i), (a)(4)(C)(i) and (a)(4)(D)(i)
Other:	**None**
Post DWI Conviction Licensing Action:	See Footnote Nos. 3 & 4.
Type of Licensing Action (Susp/Rev) and Term of License Withdrawal Action:	**Special Note:** The licensing sanctions for a drunk driving offense conviction have been be replaced by susp/rev actions under the administrative per se law. However, the licensing sanctions noted below for persons under 21 years old will remain unchanged. For Persons Under 21 Years Old, who are conviced of "driving while under the influnce" or with a BAC of "0.02 but < 0.10": 1st off-**Susp 90 to 120 dys**; 2nd off-**Susp 1 yr to 18 mos**; 3rd and sub. offs-**Rev until the person reaches 21 or for 3 yrs whichever is longer** §5-65-304

[1]The administrative licensing action is reversed if the licensee is acquitted of the drunk driving charges upon which such action was based. §5-65-104(d)(2)(B)

[2]A person is eligible for a restrict license based upon extreme and unusual hardship that the person must use a vehicle either (1) to go to and from a place of employment, (2) in the course of employment, (3) to and from an educational institution or (4) to and from an Alcohol Safety Education and Treatment Course. §5-65-120

[3]Under separate provisions of law, a person convicted of driving while under the influence of a controlled substance must have their driving privileges suspended for 6 mos. In cases of extreme hardship, restricted driving privileges may be granted. §§5-64-710(a) and 27-16-915(a) & (b)

[4]In addition to any other sanctions provided by law, a person under 18 years old, who is convicted of a DWI offense (including driving while under the influence of a controlled substance), must have their license suspended for either 12 months or until they reach 18 whichever is the longer suspension period. However, a restricted hardship driving permit is available for employment/educational purposes. §§5-64-710, 5-65-116 & 27-16-914

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of Withdrawal:

Special Note: The mandatory licensing sanctions for a drunk driving offense conviction have been be replaced by the mandatory susp/rev actions under the administrative per se law. However, the mandatory licensing sanctions noted below for persons under 21 years old will remain unchanged.
For Persons Under 21 Years Old, who are conviced of "driving while under the influnce" or with a BAC ≥0.02 but <0.10: 1st off-**None** (Note: A restricted license is available for reasons of employment or for attendance at an alcohol and driver education program.); 2nd off-**Susp 1 yr**; 3rd and sub. offs-**Rev 3 yrs** §5-65-304

Other:
Rehabilitation:
Alcohol Education:

Yes §§5-65-104(h) & 5-65-115(a)[1]
Persons Under 21 Years Old, who are convicted of "driving while under the influence" or with a BAC ≥0.02 but <0.10 must complete an alcohol and driving education program. §5-65-307(a) This program must be completed before a person's license can be reinstated. §5-65-307(b)

Alcohol Treatment:

Yes §5-65-115(a)
Special Note: Alcohol education or treatment is mandatory and is in addition to any other sanction. *Harris v. State,* 686 S.W.2d 440 (Ark. 1985)

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority:

Forfeiture. For a 4th DWI off (w/n 3 yrs), a court may order the defendant's motor vehicle forfeited. §5-65-117(a)

Terms Upon Which Vehicle Will Be Released:

N/A

Other:

Special Note: License plates shall be impounded for **90 dys** if a driver has been arrested for driving while suspended/revoked where such susp/rev was based on an alcohol off conviction.[2] §5-65-106

Miscellaneous Sanctions Not Included Elsewhere:

Ignition Interlock. In addition to any other sanction for a DWI offense, the court may, if the defendant can afford it, require them only to operate a motor vehicle equipped with an ignition interlock device. This requirement may continue for up to 1 yr after the person's license is no longer suspended or revoked. §5-65-118

[1]An alcohol education/treatment program must be completed before a suspended/revoked license can be reinstated. §§5-65-104(h) & 5-65-115(b)
[2]However, a temporary license plate may be issued if the court determines that it is in the best interests of the dependents of the offender.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	I. Death caused by driving in a reckless or wanton manner in disregard of the safety of others (negligent homicide) - Class A Misdemeanor/Class C Felony[1] §27-50-307 II. Death caused by driving while intoxicated or with a BAC ≥0.10 (negligent homicide) - Class D Felony §5-10-105(a)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Class A Misdemeanor - Not more than **1 yr** §5-4-401(b)(1) Class C Felony - **3 to 10 yrs** §5-4-401(a)(4) Class D Felony - Not more than **6 yrs** §5-4-401(a)(5)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Class A Misdemeanor - Not more than **$1,000** §5-4-201(b)(1) Class C or D Felony - Not more than **$10,000** §5-4-201(a)(2)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §§27-16-905(1) & 27-50-307(b)
Length of Term of Licensing Withdrawal:	**1 yr** §27-16-912
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr** §§27-16-905(1) & 27-16-912
Other:	
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote No. 2.
Sanction:	
Criminal:	
Imprisonment (Term):	Misd **2 dys to 6 mos** §27-16-303
Mandatory Minimum Term of Imprisonment:	**10 dys** if susp or rev is based on a DWI charge §5-65-105

[1]**Comment:** Under §27-50-307, a persons commits "negligent homicide" if they cause the death of another while operating motor vehicle in a reckless or wanton manner in disregard of the safety of others and provides that this offense "shall be included in and be a lesser degree of involuntary manslaughter." However, a "negligent homicide" offense, not related to drunk driving, is a Class A Misdemeanor (§5-10-105(b)) whereas, if such an offense is considered manslaughter, it would be a Class C Felony (§5-10-104(c)).
[2]I. It is Cl C misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term ≤30 dys or a fine ≤$100. §§5-4-201(a)(3), 5-4-401(b)(3) and 27-23-107(b) & (c) II. In addition, a person, who has been convicted of violating an out-of-service order, is subject to a civil penalty of from $1,000 to $2,500. §27-23-113(c) The law also provides for the following disqualification periods against a person who has been convicted of an out-of-service order: 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 (mand) to 5 yrs; 3rd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or more than 15 persons: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. §27-23-112(g)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI:
(continued)

Fine ($ Range):	Not more than **$500**
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	If based on susp, susp. If based on rev, **rev.** §27-16-303 See Vehicle Impoundment/Confiscation on p. 3-38.
Length of Term of License Withdrawal Action:	Original susp period is extended a like period. Original period of rev is extended 1 yr. §27-16-303
Mandatory Term of License Withdrawal Action:	Same as above.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**Yes** §5-65-208(a)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**[1]
Vehicle Passengers:	**Possible**
Pedestrian:	**Possible**

[1]Based upon probable cause of DWI offense related to an accident involving either a death or where there is reason to believe that a death may occur, a deceased driver may be administered a test of their blood, breath or urine for alcohol or drug presence and concentration. §5-65-208(a)

Other State Laws Related To Alcohol Use:
(continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[1] §§3-3-202 & 3-3-203 (Year Eff: 1935)
Minimum Age (Years) Possession:	**21**[1] §§3-3-203 There is an employment exemption for persons over 18. §3-3-204
Minimum Age (Years) Consumption:	**None** Note: Under §3-3-203(a)(2), "intoxicating liquor, wine or beer in the body of a minor shall not be deemed to be in his possession."
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the Case (Case Citation):	**Yes** *Shannon v. Wilson,* 947 S.W.2d 349 (Ark. 1997)[2]
Dram Shop Actions-Social Hosts:	**No** *Alpha Zeta Chapter of Pi Kappa Alpha Fraternity v. Sullivan,* 740 S.W.2d 127 (Ark. 1987)[3]
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** for all offenses See Footnote No. 4 for citations.
Term of Imprisonment:	Package Sales: (1) All alcoholic beverages except those noted below-1st off-**none**; 2nd & sub. off-**6 mos to 1yr**; (2) Beer and wine not in excess of 5% alcohol by wgt-**none**. On-Premisis Consumption Sales: (1) All alcoholic beverages except those noted below-**not more than 6 mos;** (2) beer (all types)-**none**; (3) wine not exceeding 14%-**10 to 30 dys**
Fine ($ Range):	Package Sales: (1) All alcoholic beverages except those noted below-1st off-**$100 to $250**; 2nd & sub. off-**$250 to &500**; (2) Beer and wine not in excess of 5% alcohol by wgt-**None**. On-Premisis Consumption Sales: (1) All alcoholic beverages except those noted below-**Not more than $1,000**; (2) beer (all types)-**None**; (3) wine not exceeding 14%-**$100 to $500**

[1]There is an exemption for either serving alcoholic beverages to one's family or using wine for religious purposes. §3-3-202

[2]In this case, the court stated "the holding in *Carr* is hereby modified to allow juries to determine whether the violation of the criminal statute for selling alcohol to minors by a licensed vendor is the proximate cause of any subsequent alcohol-related injury to a minor or a third person." 947 S.W.2d at 358 **Comment:** This case concerned illegal sales of alcoholic beverages to minors. However, the reasoning in this case could be applied to the sale of such beverages to adult intoxicated persons. These sales are also prohibited by statutory law. Accordingly, a person, who has been injured by an individual, who became intoxicated at a licensed establishment, may have a common law cause of action against such vendor. Note: For previous cases denying liability, see *Carr v. Turner,* 385 S.W. 2d 656 (Ark. 1965), *Milligan v. County Line Liquor,* 709 S.W.2d 409 (Ark. 1986), *Yancy v. Beverage House of Little Rock, Inc.,* 723 S.W.2d 826 (Ark. 1987), & *Mann v. Orrell,* 912 S.W.2d 1 (Ark. 1995).

[3]**Comment:** The court did not address, even via *dicta*, what if any impact its decision in *Shannon* would have case law concerned with social host liability.

[4]Citations: §§3-3-102, 3-3-103, 3-3-201, 3-3-202, 3-3-206 to 3-3-210, 3-4-301, 3-4-401 to 3-4-405, 3-4-604, 3-5-202, 3-5-203, 3-5-207, 3-5-221, 3-5-307, 3-5-410, 3-9-301, 3-9-302, 3-9-306, 3-9-307, 3-9-236, 3-9-204, 5-4-201(a)(2) and 5-4-401(4) & (5).

Other State Laws Related To Alcohol Use:
(continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes** Under certain conditions

Length of Term of License Withdrawal: Package Sales: (1) All alcoholic beverages except those noted below-for two or more convictions-**Rev**[1] (and a possible administrative fine); (2) Beer and wine not in excess of 5% alcohol by wgt-**none**. On-Premisis Consumption Sales: (1) All alcoholic beverages except those noted below-**Susp/Rev**[1];(2) beer (all types)-**Susp/Rev**[1]; (3) wine not exceeding 14%-**Susp/Rev**[1] See the Special Note concerning administrative fines below.

Criminal Action Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action: **Misd** for all offs. (except as noted) See Footnote No. 4 on p. 3-41 for citations.

Term of Imprisonment: Package Sales: (1) All alcoholic beverages except those noted below - (a) where "knowledge" is a factor[2]-1st off (Cl D felony)-**not more than 6 yrs**; 2nd off (w/n 5 yrs) (Cl C felony)-**3 to 10 yrs**; (b) where "knowledge" is not a factor[2]-1st off-**none**; 2nd & sub. off-**not more than 1 yr**; (2) beer and wine not in excess of 5% alcohol by wgt.-**not more than 1 yr** On-Premisis Consumption Sales: (1) All alcoholic beverages except those noted below-**not more than 6 mos**; (2) beer and wine not in excess of 5% alcohol by wgt-**not more than 1 yr**; (3) wine not in excess of 14%-**10 to 30 dys**

Fine ($ Range): Package Sales: (1) All alcoholic beverages except those noted below-(a) where "knowledge" is a factor[2]-1st off.-**not more than $10,000**; 2nd off (w/n 5 yrs)-**not more than $10,000**; (b) where "knowledge" is not a factor[2]-1st off-**$200 to $500**; 2nd & sub. off-**$500 to $1,000**; (2) beer and wine not in excess of 5% alcohol by wgt.-**not more than $500** On-Premisis Consumption Sales: (1) All alcoholic beverages except those noted below-**not more than $1,000**; (2) beer and wine not in excess of 5% alcohol by wgt-**not more than $500**; (3) wine not in excess of 14%-**$100-$500**

[1]Length of Rev/Susp is not specified in the statute.
[2]*State v. Jarvis,* 427 S.W.2d 531 (Ark. 1968)

Special Note: The following administrative fines may be imposed retailers (Class B Permit holders) for a violation of the Alcoholic Beverage Control Laws: 1st off-$200 to $500; 2nd off (w/n 12 mos)-$400 to $1,000; 3rd off (w/n 12 mos)-$600 to $1,500 §§3-4-401, 3-4-402(a)(2) & (b) and 3-4-404(11) & (18)

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcohlic Beverages Withdrawn (Yes/No): **Yes** Under certain conditions

Length of Term License Withdrawal: Package Sales: (1) All alcoholic beverages except those noted below - for two or more convictions-**Rev**[1]; (2) beer and wine not in excess of 5% alcohol by wgt.-**1 yr Rev/Susp** On-Premisis Consumption Sales: (1) All alcoholic beverages except those noted below-**Rev/Susp**[1]; (2) beer and wine not in excess of 5% alcohol by wgt-**1 yr Rev/Susp**; (3) wine not in excess of 14%-**Rev/Susp**[1]

See the Special Note concerning administrative fines on p. 3-42.

Anti-Happy Hour Laws/Regulations: **No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No): **No**

Anti-Consumption Law (Yes/No): **Yes** Probably The law makes it an offense for a person to consume alcoholic beverages "in any public place, on any highway, or street, or upon any passenger coach, streetcar or in or upon any vehicle commonly used for the transportation of passengers...." §5-71-212(c)

[1]Length of Rev/Susp is not specified in the statute.

STATE:	**CALIFORNIA**
General Reference:	West's Annotated California Codes Underlined sections are repealed 7/1/99. *Italicized* sections are effective 7/1/99.
Basis for a DWI Charge:	See Bicycle Riders below.
Standard DWI Offense:	Under the influence of an alcoholic beverage Veh. Code §§23152 & 23153
Illegal Per Se Law (BAC/BrAC):	≥**0.08**[1,2&3] Veh. Code §§23152(b) & 23153(b)
Presumption (BAC/BrAC):	≥**0.08**[2] Veh. Code §§23155(a)(3) & *23610(a)(3)*
Types of Drugs/Alcohol and Drugs:	Under the influence of (1) **Any Drug** or (2) a Combination of Alcohol and Any Drug[4] Veh. Code §§23152 & 23153
Other:	For Commercial Motor Vehicle Operators, see p. 3-49.
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** Veh. Code §§23157(h) & *23612(h)*[5] See Footnote No. 1 on p. 3-52. Persons under 21 years old who have been detained for operating a motor vehicle with a "blood-alcohol concentration" ≥0.01. Veh. Code §§*13388*, 23136(c), & 23137
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** Veh. Code §§23157 & *23612*
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** Veh. Code §§23157(a)(1) & *23612(a)(1)*
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) Veh. Code §§23157(a)(4) & *23612(a)(4)*
Other Information:	A person, who has been arrested for a DWI offense, may be compelled to submit to a blood test for either alcohol concentration or the presence of drugs. *Mercer v. Department of Motor Vehicles,* 809 P.2d 404 (Cal. 1991).
Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:	
Blood:	**Yes** Veh. Code §§23157 & *23612*
Urine:	**Yes (Limited)**[6] Veh. Code §§23157 & *23612*
Other:	**None**

[1]**Persons Under 21 Years Old.** See Juvenile Offenses Involving Alcohol on p. 3-49 and admin. licensing actions on pp. 3-51 & 3-52.
[2]Percent by wgt. of alcohol in the blood which is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. Veh. Code §§23152(b), 23155(b) & *223610(b)* Note: The provision of the vehicle code related to DWI injury offenses, Veh. Code §23153, only refers alcohol concentration in terms of percent by weight.
[3]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more. *People v. Bransford,* 884 P.2d 70 (Cal. 1994)
[4]It is illegal to be under the influence of certain "controlled substances" irrespective of whether the offender was operating a motor vehicle. Health and Safety Code §11550
[5]A PBT may be conducted without legislative authority. A.G. Opinion 88-1102, Oct. 26, 1989
[6]Applies only to person who has been arrested for driving under the influence of drugs.
Bicycle Riders. Bicycle riders are subject to the provisions of the drunk driving laws. Veh. Code §21200(a) Nevertheless, there is a separate provision that makes it is illegal to ride a bicycle on the highways while under the influence of either alcohol or drugs. A person, who violates this provision is subject to a fine of not more than $250. This provison further provides that a person under 21 years old, who commits this offense, is subject to license suspension under Veh. Code §13202.5 (See the Special Note on p. 3-52 for details on this license suspension.). Veh. Code §21200.5

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Yes** Plea bargaining is prohibited in serious felony and DWI cases unless (1) there is insufficient evidence of the offense or (2) the reduction/dismissal of charges would not result in a substantial change in sentence. Penal Code §1192.7 & *People v. Arauz,* 7 Cal.Rptr.2d 145 (Cal.App. 2 Dist. 1992) In addition, a criminal charge cannot be dismissed without the courts approval. Penal Code §1385 Note: Under Veh. Code §§23212 & *23635*, the court must give the reasons a DWI charge either was reduced to a lesser offense, changed to reckless drving or was dismissed.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes**[1] Veh. Code §§23249.50 et seq., *23646 se seq. and 23655*

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	Persons Under 21 Years Old. Refusal to submit to a PBT where there has been a lawful detention and where there is reasonable cause to believe that the person was operating a motor vehicle with a "blood-alcohol concentration" ≥0.01. 1st Refusal-**Susp 1 yr** (mand); 2nd Refusal[2] (w/n 7 yrs)-**Rev 2 yrs** (mand); 3rd & Sub Refusal[3]-**Rev 3 yrs** (mand) Veh. Code §§13353.1(a), 13353.8, *13388,* 23136(c) & 23137
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**No**
Administrative Licensing Action (Susp/Rev):	1st Refusal-**Susp-1 yr** (mand); 2nd Refusal (w/n 7 yrs)-**Rev-2 yrs**[4] (mand); 3rd Refusal (w/n 7 yrs)-**Rev-3 yrs**[5] (mand) Note: These sanctions also apply to persons under 21 yrs old, who are arrested for a violation of Veh. Code §23140 (driving with a BAC ≥0.05) and who refuse to submit to a test under the implied consent law. Veh. Code §§13353, 13353.4(a) 23157 & *23612*
Other:	See the Special Note on p. 3-49.

[1]PSI alcohol assessment programs are adopted on a county by county basis. I.e., a county elects whether to participate in such a program. Veh. Code §§23249.58 & *23646 et seq.*

[2]Or a refusal where w/n 7 yrs a person has either been convicted of a DWI/Veh. Homicide offense convictions, refused to submit to a test under the implied consent law, or has a prior admin. per se license suspension of any type.

[3]Or a refusal where w/n 7 yrs a person has either two or more separate DWI/Veh. Homicide offense convictions, refusals to submit to a test under the implied consent law, or prior admin. per se license suspensions of any type.

[4]Or, if w/n 7 yrs, a person refuses after having (1) been previously convicted of a DWI/Veh. Homicide off or (2) their license previously suspended/revoked for an admin. per se violation as of the date of refusal.

[5]Or, if w/n 7 yrs, a person refuses after having (1) been convicted two or more times of a DWI/Veh. Homicide off or (2) their license suspended/revoked two or more times for an admin. per se violation as of the date of refusal.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note, Double Jeopardy and Prior Drunk Driving Felony Offenses below. Note: Non-Injury DWI Offenses are misdemeanors. Veh. Code §§23152 & 40000.15 **Citations:** The sanctions for violating the drunk driving laws are codified under §§23160 et seq. and *23536 et seq.*
Imprisonment/Fine:	See **Double Fines** on p. 3-48. Non-Injury DWI Off (with no previous DWI offs[1]-**96 hrs** (at least 48 hrs shall be continuous) **to 6 mos, $390 to $1,000** Non-Injury DWI Off (with one previous DWI off[1] w/n 7 yrs-**90 dys to 1 yr, $390 to $1,000** Non-Injury DWI Off (with two previous DWI offs[1] w/n 7 yrs-**120 dys to 1 yr, $390 to $1,000** Non-Injury DWI Off (with three previous DWI offs[1] w/n 7 yrs-**180 dys to 1 yr[2], $390 to $1,000** See Felony/Misdemeanor below. Injury Related DWI Off[3] (with no previous DWI offs)-**90 dys to 1 yr, $390 to $1,000** Injury Related DWI Off[3] (with one previous DWI off[1] w/n 7 yrs)-**120 dys to 1 yr[2], $390 to $5,000**; Injury Related DWI Off[3&4] (with two or more previous DWI offs[1] w/n 7 yrs)-State prison **2, 3 or 4 yrs, $1,015 to $5,000** Veh. Code §§23153 et seq. and *23536 et seq.* And, if there has been a DWI off with Great Bodily Injury where there has been 4 or more previous DWI offs w/n 7 yrs, an **additional consecutive** sentence of **3 yrs** in the State prison. Veh. Code §§23190(c) & *23566(c)* **Important.** See the Special Note below, Special Note No. 1 on p. 3-48, the Special Note on p. 3-49 and "Other" on p. 3-49.

[1]A previous off includes Veh. Code §§23152 & 23153 (non-injury or injury DWI offs). A guilty or nolo contendere plea to reckless driving (Veh. Code §23103) instead of a DWI charge is also considered a previous DWI offense. Veh. Code §23103.5(c)

[2]Or 16 mos, 2 or 3 yrs in the State prison. See also Penal Code §18.

[3]If more than one individual has been injured, an enhanced prison term of one (1) year is added for each victim. The maximum number of such enhancements is three (3). Veh. Code §§23182 & *23558*

[4]Also includes DWI offenses where there has been great bodily injury and there were 2 or more previous DWI offenses (injury/non-injury) w/n 7 yrs. Veh. Code §§23190(b) & *23566(b)*

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *People v. Superior Court (Moore),* 58 Cal.Rptr.2d 205 (Cal.App. 1 Dist. 1996)

Prior Drunk Driving Felony Offenses. A person, who has been convicted either of a drunk driving offense (injury or non-injury offense) and they have prior conviction w/n 10 yrs either for a felony drunk driving offense (injury or non-injury) or for vehicle manslaughter related to either gross negligence or driving drunk, is subject to the following sanctions: (1) Incarceration in either a county jail or State prison for not more than 1 yr (or incarceration in the county jail from 180 dys to 1 yr if probation is granted) (either 48 con hrs or 10 dys of community service are mandatory); (2) a fine of not less than $390 nor more than $1,000; and, (3) license revocation for 4 yrs (24 mos mandatory with restricted driving after this period provided the offender participates in either a 18 or 30 month alcohol rehabilitation program). Veh. Code §§13352(a)(7), 23175.5, 23206.5, *23550.5, 23552, 23580 & 23600* See I under Miscellaneous Sanctions on p. 3-54.

Felony/Misdemeanor. Generally, a non-injury drunk offense under Veh. Code §23152 et seq. is classified as a misdemeanor. Veh. Code §40000.15 However, a 4th or subsequent non-injury drunk driving offense is a felony if the offender is sentenced to incarceration in the State prison. Penal Code §17, Veh. Code §§23175, *23550 & People v. Coronado,* 906 P.2d 1232 (Cal. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:	Non-Injury DWI off (with no previous DWI offs)-**None**[1] Non-Injury DWI off (with one previous DWI off w/n 7 yrs)-**96 hrs (w/2 continuous periods of 48 hrs)** [1&2] Non-Injury DWI off (with two previous DWI offs w/n 7 yrs)-**30 dys**[1&2] Non-Injury DWI off (with three or more previous DWI offs w/n 7 yrs)-**180 dys**[1&2] Injury related DWI off (with no previous DWI offs)-**5 dys** Injury related DWI off (with one previous DWI off w/n 7 yrs)-**30 dys**[2] Injury related DWI off (with two or more previous DWI offs w/n 7 yrs)-**30 dys**[2] See Special Note No. 2 below, the Special Notes on pp. 3-47 & 3-49 and **Home Detention** on p. 3-51.
Mandatory Min. Fine ($):	Non-Injury DWI off (with no previous DWI offs)-**$390** Non-Injury DWI off (with one previous DWI off w/n 7 yrs)-**$390** Non-Injury DWI off (with two previous DWI offs w/n 7 yrs)-**$390** Non-Injury DWI off (with three or more previous DWI offs w/n 7 yrs)-**$390** Injury related DWI off (with no previous DWI offs)-**$390** Injury related DWI off (with one previous DWI off w/n 7 yrs)-**$390** Injury related DWI off (with two or more previous DWI offs w/n 7 yrs)-**$390** See (1) the Special Note on p. 3-47 and (2) the Special Note and "Other" on p. 3-49.

[1]**Child Endangerment.** For non-injury offs where a minor under 14 year old was a passenger, the following mandatory jail sanctions are imposed: 1st off-48 continuous hrs; 2nd off-10 dys; 3rd off-30 dys; 4th off-90 dys. However, these sanctions are not imposed if the driver has been convicted of violating Penal Code §273a that concerns endangering the life or health of a child. Veh. Code §§23194 & *23572*

[2]In addition to those given, the following mandatory sanctions became operative when the Dept of Motor Vehicles certified to the State Sec. of State that the Dept. had submitted a completed application to the U.S. Dept. of Trans. for grant funds under 23 USC §408: One period of 48 con. hours of imprisonment (jail, minimum security facility or inpatient rehabilitation facility) or 10 days of community service. Veh. Code §§23206.5 & *23580*

Double Fines. The law provides that the fine sanction is to be **double** the amount otherwise prescribed by law for persons, who commit a drunk driving offense on the segments of certain highways. The prescribed sanction applies on (1) Route 37, between the intersection with Route 121 and the intersection with Route 29, (2) Route 4, between the intersection with Cummings Skyway and the intersection with Route 80, (3) Route 74, between the intersection with Route 5 and the intersection with the Riverside-Orange County line, (4) Route 46, between the intersection with Route 101 and the junction with Route 41, (5) Route 12, between the intersection with Walters Road in the City of Suisun and the intersection with Lower Sacramento Road in the City of Lodi, and (6) the Golden Gate Bridge. Note: Additional forfeitures or assessments, which are based on the fine imposed, are to be calculated using only the base fine prior to the above enhancement. Streets and Highways Code §97 and Veh. Code §42010 These sections are repealed January 1, 2000.

Special Note No. 1: Also, a person convicted of a DWI injury related offense in which more than one individual has been injured shall receive an enhanced prison term of one (1) year for each additional injured individual. The maximum number of one (1) year enhancements which may be imposed is three (3). Veh. Code §§23182 & *23558*

Special Note No. 2: A person is subject to a mandatory 60 con. days of imprisonment if they operate a vehicle under the following three (3) conditions: (1) In a reckless manner; (2) while DWI; and, (3) while driving 30 or more MPH above the posted speed limit on a freeway/20 or more MPH above the posted speed limit on any other highway or street. Veh. Code §§23208 & *23582*

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:	
Community Service:	**Yes** See Footnote No. 2 on p. 3-48.
Restitution (eg Victim's Fund)	**Yes** Injury related DWI offs Gov't. Code §13959 et seq. (Victims' Assistance Fund) The court may also order direct compensation by the defendant to the victim(s). Gov't. Code §13967 & Penal Code §1203.1
Other:	**Test Fee.** The counties (except Contra Costa County) are authorized to impose on defendants a fee of not more $50 for conducting an alcohol chemical test. Penal Code §1463.14 **Physician/Surgeon Assessment.** A county may via resolution require a defendant to pay an assessment fee of $2 per every $10 of fine or fraction thereof actually imposed for the purpose of reimbursing physicians/surgeons who perform emergency medical procedures resulting from DWI offenses. Penal Code §1465 **EMS Cost.** A person may be held liable for up to $1,000 to pay for the cost of an emergency response which resulted from the negligent operation of a motor vehicle while under the influence of either alcohol or drugs[1]. Gov't. Code §§53150 et seq.

[1]Note: The law does not specifically require a DWI offense conviction as a condition of liability.

Juvenile Offenses Involving Alcohol. Under Veh. Code §§23140, 23141, 23142, *23502 & 23504* it is unlawful for a person under 21 yrs old to operate a motor vehicle if they have a BAC ≥0.05 (Standard: Percent by weight of alcohol in the blood). The sanctions for this offense are participation in either (1) an alcohol education program or (2) a community service program with an alcohol education component. Such offenders are also subject to administrative licensing sanctions; see p. 3-51. Note: A person under 21 years old who violates the regular DWI laws must also participate in either an alcohol education or rehabilitation program. Veh. Code §§23142 *& 23520* If such person fails to complete such programs, their license may be either suspended or revoked until they either show proof of completion or until they are 21 years old. Veh. Code §§23144 *& 24508*

Special Note: A person, who has been convicted of any DWI offense and who has also "willfully refused" to submit to a chemical test, is subject to the follwing sanctions: DWI non-injury offs: 1st off, if probation is granted, the court must use the follwing sentence structure: Jail-48 hrs (mandatory) up to 6 mos; fine-$390 (mandatory) up to $1,000; and lic. susp-6 mos; 2nd off.-96 hrs in jail (mandatory); 3rd off-10 days in jail (mandatory); 4th & sub. offs.-18 days in jail (mandatory) DWI injury offs 1st off-48 continuous hrs in jail (mandatory); 2nd off-96 hrs in jail (mandatory) Veh. Code §§23159 *& 23577*

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is prohibited from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if they are convicted of driving a CMV while under the influence of alcohol or a controlled substance. For a subsequent conviction of driving A CMV while under the influence of alcohol or a controlled substance, a person is prohibited from operating such a vehicle for life. A person, who refuses to submit to a chemical test while operating a CMV, is subject to licensing sanctions (including license sanction enhancements) under the implied consent law; however, if they were transporting hazardous materials, the susp is for 3 yrs (mand). A CMV operator must be placed "out-of-service" for 24 hrs if they have a BAC ≥0.01 (Standard: Percent by weight of alcohol in the blood.). A CMV operator commits a DWI offense if they operate a CMV with a BAC/BrAC ≥0.04 (For standards, see Footnote No. 2 on p. 3-45.); a conviction for this offense subjects the offender to the same sanctions as would a conviction for any other DWI offense. Veh. Code §§13353(a), 15210(b) & (d), 15300, 15302, 23152(d), 23153(d) and 34501.15(a)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other (continued):

Alcohol Program Assessments. I. A person convicted of a DWI offense must pay an assessment, not to exceed $50, for the purpose of funding alcohol abuse education and prevention programs. Veh. Code §§23196(a) & *23645(a)* II. A fee of not more than $75 may be assessed against a person convicted of a DWI offense in counties participating in an alcohol and drug assessment program. Veh. Code §§23249.53, 23249.55,& *23649*

Special State Penalty (Fine). Under Penal Code §1464(a), an additional State penalty of $10 is assessed against every defendant for every $10 of a fine (or fraction thereof) actually imposed and paid by a defendant.[1]

Special County Penalty (Fine). Under Gov't. Code §76000, an additional county penalty of $7 is assessed against every defendant for every $10 of a fine (or fraction thereof) actually imposed and paid by a defendant.[1]

Ignition Interlock.[2] (1) The court may order a 1st offender (injury or non-injury related) and (2) must order a second offender (injury or non-injury related) w/n 7 yrs to only operate motor vehicles that are equipped with "ignition interlock" devices. This requirement must last for a period of from 1 to 3 yrs. The court, "in the interest of justice", may waive this requirement. Veh. Code §§23246(a) & (b) and *23575(a)* In addition, the State Judicial Council may provide and in certain circumstances must provide for exemptions to these requirements; see Veh. Code §§23246(c) and *23575(a)* for details. See Footnote No. 4 on p. 3-53 concerning the issuance of restricted driving privileges to drunk driving offenders on the condition that they only operate motor vehicles that are equipped with "ignition interlock" devices. This condition applies to persons who either (1) have been convicted of a non-injury drunk driving offense and have had 3 or more previous drunk driving offense convictions (injury or non-injury) w/n 7 yrs or (2) have been convicted of an injury related drunk driving offense and have had 2 or more previous drunk driving offense convictions (injury or non-injury) w/n 7 yrs.

Drunk Driver Visitation Program (Persons Under 21 Years Old). For a 1st DWI non-injury offense or a violation of Veh. Code §23140 (Juvenile Offenses Involving Alcohol, see p. 3-49.) A person, with their consent and as part of their probation, may be ordered by the court to visit trauma or hospital facilities to observe victims of accidents where alcohol was involved. Veh. Code Note: In order to participate in this program, persons under 21 must agree not to drink alcoholic beverages until they are 21. Veh. Code §§23145 et seq. and *23509 et seq.*

[1]I.e., the portion of any fine that has been either suspended or reduced is not considered when calculating this assessment.
[2]Vehicle Code provisions concerning ignition interlock devices are effective only until January 1, 2005. Veh. Code §23249.1

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other (continued):

Home Detention. DWI offenders are eligible for "home detention" as an alternative to imprisonment. This alternative includes "home detention" for certain minimum mandatory jail sentences. However, the mandatory sanctions for multiple DWI offenders under Veh. Code §§23206.5 & *23580* (48 con hrs in jail or 10 dys of community service) apply nevertheless. Penal Code §1203.016 & *People v. Superior Court (Hubbard),* 281 Cal.Rptr. 309 (Cal.App. 2 Dist. 1991).

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

See the Special Note below and Double Jeopardy on p. 3-47.
Yes Persons 21 Years Old and Above-**BAC ≥0.08**[1] or Persons Under 21 Years Old-**BAC ≥0.05/0.01**[1] (See the **Comment** on p, 3-52.) 1st violation-**Susp 4 mos** (mand for persons under 21 years old) A person 21 yrs old and above, who participates in an alcohol education or treatment program, is subject to a mand license susp for 30 dys followed by restricted driving privileges, except as noted, for 60 dys for the purpose of either participating in the program or going to and from a place of employment. Following successfully completion of the program, "unrestricted" driving privileges may be granted after the 60 dy restricted driving privileges. However, if the restricted license is used to go to and from a place of employment, the suspension with restrictions must be for 6 mos. Veh. Code §13353.7 2nd & sub. violations[2&3] (w/n 7 yrs)-**Susp 1 yr** (mand) Veh. Code §§13353.2, 13353.3 13353.4(a), *13380 & 13382* See Footnotes No. 4, 5, 6 & 7.

[1]Based upon a person driving either (1) with a blood alcohol concentration ≥0.05 based on percent by weight of alcohol in the blood or (2) with an alcohol concentration of 0.01 based on either a preliminary breath test or "other chemical test". Veh. Code §13353.2(a)
[2]For purposes of determining whether a license sanction enhancement should be imposed, the following violations/convictions are considered prior violations: Any DWI offense, vehicle homicide, refusal to submit to a chemical test and, of course, a previous admin. per se violation (appears to include any previous type of admin. per se action). Veh. Code §13353.3(b)(2)
[3]Under Veh. Code §13353.7(d), the 1 yr mand susp remains if effect only so long as such suspension is required for subsequent violations per 23 USC §§408 & 410.
[4]If a person is "acquitted" of DWI charges associated with the admin. per se violation, the admin. per se suspension is cancelled and the driver's license is reinstated. Veh. Code §13353.2(e) **Special Note:** "Dismissal" of DWI charges is not the same as "acquittal" of such charges and will not result in license reinstatement. *Gikas v. Zolin,* 863 P.2d 745 (Cal. 1993), *Agresti v. Dept. of Motor Vehicles,* 7 Cal.Rptr.2d 353, (Cal.App. 5 Dist. 1992), & *Helmandollar v. Director, DMV,* 9 Cal.Rptr.2d 155 (Cal.App. 3 Dist. 1992)
[5]Admin. per se suspensions and DWI susps/revs are to run concurrently. The total period of license susp/rev shall not exceed the longer of the two periods. Veh. Code §13353.3(c)
[6]Note: A CDL driver, who is found subject to the admin. per se law for 1st violation while not operating a CMV, would have their CDL privileges susp for a mandatory period of 30 dys followed by restricted driving privileges for 5 mos. Veh. Code §13353.6 & *Murphy v. Pierce,* 2 Cal.Rptr.2d 18 (Cal.App. 6 Dist. 1991)
[7]Administrative suspensions are "independent" of licensing actions taken via convictions for DWI offenses. E.g., a mand susp of 1 yr for a 2nd admin. per se violation will apply notwithstanding a court order allowing restricted driving privileges for a 2nd DWI (non-injury) offense conviction. *Robertson v. Dept. of Motor Vehicles,* 9 Cal.Rptr.2d 319 (Cal.App. 1 Dist. 1992)

Special Note: The administrative per se law does not violate a person's constitutional rights to due process of law or equal protection of the laws. *Peretto v. Department of Motor Vehicles,* 1 Cal.Rptr.2d 392 (Cal.App. 1 Dist. 1991)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Under Separate Provisions of Law, Persons Under 21 Years Old are subject to a, **susp for not less than 1 yr** (30 dys mand) if a "preliminary breath test"[1] or "other chemical test" result indicates a "blood-alcohol concentration" ≥**0.01**. After the mandatory susp period, restricted driving privileges are available based upon a critical need to drive. Veh. Code §§13353.3(b)(3), 13353.8, *13390* & 23136
Comment: The law provides for two separate administrative licensing actions against persons under 21 years old who are operating a motor vehicle with an alcohol concentration ≥**0.01**. See Veh. Code §§13352.2 & 23136.

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

See Prior Drunk Driving Felony Offenses on p. 3-47.

Non-Injury DWI Off (with no previous DWI offs)-**Susp** Veh. Code §§13352(a)(1), 23161, & *23536*
Non-Injury DWI Off (with one previous DWI off w/n 7 yrs)-**Susp** Veh. Code §§13352(a)(3), 23165 & *23540*
Non-Injury DWI Off (with two previous DWI offs w/n 7 yrs)-**Rev** Veh. Code §§13352(a)(5), 23170 & *23546(a)*
Non-Injury DWI Off (with three or more previous DWI offs w/n 7 yrs)-**Rev** Veh. Code §§13352(a)(7), 23175 & *23550*
Injury Related DWI Off (with no previous DWI offs)-**Susp** Veh.§§13352(a)(2), 23180 & *23554*
Injury Related DWI Off (with one previous DWI off w/n 7 yrs)-**Rev** Veh. Code §§13352(a)(4), 23185 & *23560*
Injury Related DWI Off (with two or more previous DWI offs w/n 7 yrs)-**Rev** Veh. Code §§13352(a)(6), 23190 & *23566* See Footnote No. 2 and the Special Note below.
Additonal Citations: Veh. Code §§23161, 23166, 23171, 23176, 23181, 23186, 23191, *23538*, *23542*, *23548*, *23552*, *23556*, *23562* & *23568*

[1]The California Court of Appeal has held that the State has not established the reliability of preliminary breath screening devices. *Coniglio v. Department of Motor Vehicles,* 46 Cal.Rptr.2d 123 (Cal.App. 6 Dist. 1995) (review denied by the California Supreme Court, 1996 Cal. LEXIS 533)
[2]If a person is involved in an accident and they have a BAC ≥0.08 and they have been convicted of a DWI related vehicle homicide (w/n 5 yrs), their license shall be either suspended or revoked as follows: 1) If the accident does not result in a DWI conviction (either injury or non-injury) - suspension for 1 year (mandatory); and, 2) If the accident results in a DWI conviction (either injury or non-injury) - revocation for 3 years (mandatory). This revocation period is concurrent with any other DWI imposed restriction, supension or revocation if this is a first DWI conviction or a second conviction w/n 5 years. This revocation period is cumulative with any other DWI imposed restrictions, suspension or revocation, if there have been two (2) or more previous DWI convictions w/n 5 yrs. Veh. Code §13954

Special Note: There are two provisions of the California Vehicle Code that provide for special licensing sanctions against minors who violate the DWI laws. I. Under Veh. Code §13352.3, a person, who is under 18 yrs old and who is convicted of an alcohol driving offense, is subject to a license revocation (1) until they are 18, (2) for 1 yr or (3) per Veh. Code §13352 whichever period is longer. II. Under Veh. Code §13202.5, a person, who is under 21 years old and who is convicted either of a DWI (alcohol or drugs) offense or of a vehicle manslaughter offense, is subject to a license suspension for one (1) year. However, such person may be eligible for restricted driving privileges based on "a showing of a critical need to drive" (Veh. Code §13202.5(c)).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.):	See the Special Note on p. 3-49. Non-Injury DWI Off (with no previous DWI offs)-**6 mos**; Non-Injury DWI Off (with one previous DWI off w/n 7 yrs)-**2 yrs**; Non-Injury DWI Off (with two previous DWI offs w/n 7 yrs)-**3 yrs**[1]; Non-Injury DWI Off (with three or more previous DWI offs w/n 7 yrs)-**4 yrs**; Injury Related DWI Off (with no previous DWI offs)-**1 yr**; Injury Related DWI Off (with one previous DWI off w/n 7 yrs)-**3 yrs**; Injury Related DWI Off (with two or more previous DWI offs w/n 7 yrs)-**5 yrs** Veh. Code §§13352 & 13352.5
Mandatory Minimum Term of Withdrawal:	Non-Injury DWI Off (with no previous DWI offs)--[2] (6 mos mand for persons who operate certain types of heavy trucks or buses. Veh. Code §§12804.9, 13252(a)(1), 23161(d) & *23536(e)*); Non-Injury DWI Off (with one previous DWI off w/n 7 yrs)--[3]; Non-Injury DWI Off (with two previous DWI offs w/n 7 yrs)-**18 mos**[4]; Non-Injury DWI Off (with three or more previous DWI offs w/n 7 yrs)-**24 mos**[4]; Injury Related DWI Off (with no previous DWI offs)-**1 yr**; Injury Related DWI Off (with one previous DWI off w/n 7 yrs)-**18 mos**[5]; Injury Related DWI Off (with two or more previous DWI offs w/n 7 yrs)-**30 mos**[4] **Special Note No. 1:** If a DWI conviction results either in a jail sanction of 1 yr in the county jail or in imprisonment of 1 yr or more in the State prison, the court may postpone the suspension of driving privileges until the term of incarceration has been served. Veh. Code §23199 & *23665* **Special Note No 2.** For either non-injury or injury related DWI offenses, an offender's license (i.e., complete driving privileges) cannot be reinstated until they have completed an either an alcohol or drug education and counseling program. Veh. Code §§13352 & 13353.4(e)

[1]Note: A license cannot be reinstated unless the defendant has completed either an 18 or 30 month alcohol treatment program. Veh. Code §13352(a)(5)

[2]Driving privileges may be restricted for 90 days under certain probation conditions. Veh. Code §§13352, 13352.5, 23161 & *23538* and Health and Safety Code §11837(a), (c) & (d)

[3]Restricted driving privileges may be granted after a defendant enrolls in or completes an alcohol rehabilitation program. This does not apply if they were operating certain types of heavy trucks or buses at the time of the offense. As an alternative, the defendant may granted a restricted license after a 12 mo susp if they are enrolled in an alcohol treatment program and they install ignition interlock devices on their vehicles. Veh. Code §§12804.9, 13352(a)(3), 13352.5 & 23166(b)(3) and Health and Safety Code §11837

[4]Restricted driving privileges may be granted after this period provided the defendant (1) has completed or is continuing to participate in an alcohol treatment program and (2) only uses vehicles equipped with an "ignition interlock" device. Veh. Code §13352(a)(5), (6) & (7) See Ignition Interlock on p. 3-50.

[5]Restricted driving privileges may be granted after 18 mos provided the defendant has completed an alcohol treatment program and consents to use ignition interlock devices on their vehicles. Veh. Code §§13352(a)(4), 23186, & *23562*

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Rehabilitation: See Special Note No. 2 on p. 3-53.

Alcohol Education: Conditions of probation, which normally provide for a reduced period of incarceration, usually require a defendant to participate in an alcohol education/rehab. program for any DWI off conviction.[1] Veh. Code §§23161, et seq. and 13352 Note: a person convicted of a first DWI offense in a juvenile court must participate in and complete either an alcohol or drug education program. Veh. Code §23154 and Health and Safety Code §11837(a), (c) & (d)

Alcohol Treatment: **Yes** See Alcohol Education above.

Vehicle Impoundment/Confiscation: Important: There are **two** vehicle impoundment laws.

Authorized by Specific Statutory Authority:

Impoundment.[2] A vehicle owned and driven by the offender may be impounded as follows for a DWI off (non-injury/injury): 1st or 2nd offs (w/n 5 yrs)-**1 to 30 dys**; subsequent offs (w/n 5 yrs) -**1 to 90 dys** Veh. Code §§23195 & *23594*

Impoundment. The vehicle owned and driven by the offender may be impounded as follows for a DWI off (non-injury/injury): 1st off-Not more than **6 mos**; sub off-Not more than **12 mos** Veh. Code §§14602, *23524(a) & 23592(a)(1)*

Forfeiture.[2] However, a defendant's vehicle may be subject to forfeiture if they have been convicted of (1) a DWI vehicle homicide off, (2) a non-injury related DWI off and have had two or more (or combinations of) convictions w/n 7 yrs for either a veh. homicide off or a non-injury/injury related DWI off or (3) a DWI serious injury off and have had one or more (or combinations of) convictions w/n 7 yrs for either a veh. homicide off or a non-injury/injury DWI off. Veh. Code §§23198 & *23596*

Terms Upon Which Vehicle Will Be Released: There are no special terms which have to be satisfied prior to releasing a vehicle. However, vehicles are impounded at the owners' expense. Veh. Code §§23195 & *23594*

Other: **Temporary Impoundment.** A law enforcement officer may "remove" from the highway any vehicle driven (1) by a person who has been taken into custody or (2) by a person under 21 yrs old who has been issued a notice of license suspension for operating a motor vehicle with a BAC ≥0.01. The vehicle may be released to the legal owner upon the payment of towing and storage charges. Veh. Code §22651.

Miscellaneous Sanctions Not Included Elsewhere: I. A person granted probation for a DWI (non-injury/injury) offense must include but is not limited to the following conditions:

[1]However, in lieu of the more traditional alcohol and drug education and treatment programs, an offender, again as a condition of probation, may be allowed to participate in a special "live-in alternative". This alternative focuses on substance abuse users and requires them to live full time at a special facility. Penal Code §8001 & Veh. Code §23192

[2]Under this impoundment/forfeiture law, no vehicle may be impounded or forfeited if another person has a community property interest in the vehicle and if it is the sole vehicle available to the defendant's immediate family. Veh. Code §§23195(b), 23198(g), *23594 & 23596*

Sanctions Following a Conviction for a DWI Offense:
(continued)

(1) They are placed on probation for 3 to 5 years (but not more than the maximum confinement time in State prison); (2) they agree not to driving with any measurable amount of alcohol in the blood: (3) they agree not to refusal to submit to an implied consent test; and (4) they agree not to commit any criminal offense. Veh. Code §§*23600*
II. For the purpose of imposing enhanced sanctions, the court may consider whether either (1) the offender's blood alcohol level was ≥**0.20** or (2) they refused to submit to a test under the implied consent law. Veh. Code §§23206.1 & *23578*

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **Yes** Vehicle Manslaughter[1] Penal Code §§17 191.5, 192(c) & 193. See the Special Note below.

Sanctions:
Criminal Sanction:
Imprisonment (Term): 1. Death caused by driving a motor veh, not involving alcohol/drugs: a. with gross negligence - Either in the county jail for **not more than 1 yr** or **2, 4, or 6 yrs** in the State prison; b. without gross negligence - Not more than 1 yr
2. Death caused by driving a motor veh in violation of Veh. Code §§23140[2], 23152 or 23153: a. with gross negligence - **4, 6, or 10 yrs**[3&4]; b. without gross negligence - Not more than **1 yr** in the county jail (or **16 mos, 2 or 4 yrs** in the State prison)[3].
Mandatory Minimum Term: **None**
Fine ($ Range): For ANY Vehicle Homicide Offense-Not more than **$10,000** Penal Code §672
Mandatory Minimum Fine: **None**
Administrative Licensing Action:
Licensing Authorized and Type of Action: 1. Death caused by driving a motor veh, not volving alcohol/drugs: a. with gross negligence - **Rev - 3 yrs** (mand); b. without gross negligence - **Susp** - not more than **6 mos** (not mand)
2. Death caused by driving a motor veh in violation of Veh. Code §§23140[2], 23152 or 23153: a. with gross negligence - **Rev - 3 yrs** (mand); b. without gross negligence - Same lic susp/rev

[1]**Implied Malice.** Under certain circumstances, in situations where a person has been killed by an intoxicated driver, evidence of voluntary intoxication can be introduced as evidence of implied malice in a murder case against the driver. Penal Code §§22 & 188, Vehicle Code §191.5(g), *People v. Watson,* 637 P.2d 279 (Cal. 1981), and *People v. Whitfield,* 868 P.2d 272 (Cal. 1994)
[2]Note: Veh. Code §23140 makes it illegal for a person under 21 years old to operate a motor vehicle with a BAC ≥0.05.
[3]If more than one individual has been killed, an enhanced prison term of one (1) year is added for each victim. The maximum number of such enhancements is three (3). Veh. Code §23182
[4]**Subsequent Offenses:** A defendant convicted of this offense is subject to imprisonment from **15 year to life**, if they had either (1) a prior vehicle manslaughter offense with gross negligence, (2) a prior vehicle intoxicated manslaughter offense without gross negligence, (3) a prior injury related drunk driving offense or (4) two or more drunk driving offenses w/n 7 yrs. Penal Code §191.5(d)
Special Note: Generally, under Penal Code §17, a crime is classified as a felony only if the defendant is punishable by confinement in the State prison. However, if the court has discretion to punish a defendant for such a crime in a place other than the State prison (such as a county jail), impose just a fine, or place the person on probation without a confinement sentence, the crime is usually classified as a misdemeanor.

Other Criminal Actions Related to DWI: (continued)

	action as for a DWI vehicle injury offense. Veh. Code §§13350.5, 13351(a)(1) & (3), 13351(b), 13556(a) and 13361(c) For persons under 21 years old, see Special Note on p. 3-52.
Length of Term of Licensing Withdrawal:	See above.
Mandatory Action--Minimum Length of License Withdrawal:	See above.
Other:	I. Vehicle **forfeiture**. Veh. Code §§23198 & *23596* II. Victims' Assistance Fund. Gov't. Code §13959 et seq.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Vehicle Forfeiture & CMV/CDL below and the Special Note on p. 3-57.
Sanction:	See Habitual Traffic Offender Law on p. 3-57.
Criminal:	
Imprisonment (Term):	**Misd** 1st off-**10 dys to 6 mos**; 2nd and subsequent offs[1] (w/n 5 yrs)-**30 dys to 1 yr** Veh. Code §14601.2
Mandatory Minimum Term of Imprisonment:	1st off-**10 dys**[2]; 2nd and subsequent offs[1] (w/n 5 yrs)-**30 dys**[2]; For a 2nd or subsequent off[1] (w/n 7 but more than 5 yrs)-**10 dys**[2] Veh. Code §14601.2(g)
Fine ($ Range):	1st off-**$300 to $1,000**; 2nd and subsequent offs[1] (w/n 5 yrs)-Not more than **$500 to $2,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**None** See Footnote No. 3.

[1]A previous offense includes not only a prior conviction under Veh. Code §14601.2, but also a violation of Veh. Code §§14601 (which prohibits driving after a license has been suspended or revoked for a reckless driving offense), 14601.1 (the general prohibition against driving while a license is either suspended or revoked) and 14601.5. See the Special Note on p. 3-57.
[2]If a defendant injuries a person while violating this law, they must also serve this mandatory minimum imprisonment term. I.e., they cannot receive work release, community service or other similar programs. Veh. Code §14601.4
[3]**Impoundment.** If the vehicle used in the offense is owned by the offender, it may be impounded following a conviction as follows: 1st off-6 mos impoundment; sub. off-12 mos impoundment. Veh. Code §§14602, 14602.5, *23524 & 23592* Note: Any vehicle driven by an arrested person may be impounded for 30 dys. Veh. Code §14602.6(a)
[4]This fine is usually mandatory. However, the court may reduce this fine in the "interests of justice".
[5]A previous offense includes a violation of Veh. Code §§14601 (which prohibits driving after a license has been suspended or revoked for a reckless driving offense), 14601.1 (the general prohibition against driving while a license is either suspended or revoked) and 14602.2 (which prohibits driving while a license is either suspended or revoked for a drunk driving offense).

Vehicle Forfeiture. A vehicle is subject to forfeiture if it is driven by a person (1) who has a suspended or revoked license, (2) who has had a previous misd conviction either of driving while suspended or revoked under other provisions of law or the habitual offender law and (3) who is the registered owner of such vehicle. However, the vehicle is not subject forfeiture if there is a community property interest in the vehicle and it is "only vehicle available to the driver's immediate family." Veh. Code §14607.6

CMV/CDL. A self employed CMV operator is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. It appears to be an infraction to violate this prohibition. The sanctions for this offense are as follows: 1st offense, a fine ≤$100; 2nd off (w/n 1 yr), a fine ≤$200; and, for a subsequent offense (w/n 1 yr), a fine ≤$250. Veh. Code §§15240, 15242, 40000.1 & 42000.5

Other Criminal Actions Related to DWI: (continued)

Length of Term of License Withdrawal Action:

Mandatory Term of License Withdrawal Action:

Special Note: The following sanctions apply if a person was driving while their license was either suspended or revoked and where the basis for the licensing action was either an implied consent refusal or an admin. per se violation. 1st off: Jail-Not more than **6 mos**; fine-**$300[4] to $1,000** Subsequent off (w/n 5 yrs)[5]: Jail-**10 dys (mand) to 1 yr**; fine-**$500[4] to $2,000** Veh. Code §14601.5 See Vehicle Forfeiture above.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes Penal Code §193.7 and Veh. Code §§13350(b), 14601.3(a), 23170(b), 23175(b), 23175.5, 23190(d), *23522, 23546(b), 23550, 23550.5, 23564(d) & 23590*

Grounds for Being Declared an Habitual Offender:

A person is declared to be an **"habitual traffic offender"** for 3 yrs, if any one of the following occurs. (1) They commit DWI related vehicle homicide (Penal Code §192(c)(3)) and they have two or more previous[1] convictions or a combination of two or more prior convictions[1] for DWI (non-injury or injury offs) or reckless driving instead of a DWI non-injury off. (2) They commit a DWI non-injury or injury offense and have two or more previous DWI offs[1] (injury or non-injury or a combination thereof). (3) They are sanctioned under Veh. Code §§23175.5 & *23550* because they have Prior Drunk Driving Felony Offenses. (4) They accumulate a "driving record"[2] while operating a vehicle when their license is either suspended or revoked; a declaration of "habitual offender status" on this basis "automatically" means that a person may be subject to the criminal sanctions noted below.

Term of License Rev While Under Habitual Offender Status:

None

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status

Misd Penal Code §17 & Veh. Code §14601.3(e)

Sanctions Following a Conviction of Driving While on Habitual Offender Status:

Imprisonment (Term):

For "habitual traffic offender" status based on veh. homicide or DWI offenses: **180 dys**[3&4]

For "habitual traffic offender" status based on vehicle operation while susp/rev and after accumulating a "driving record": 1st off-**30 dys**[3]; 2nd and sub off (w/n 7 yrs)-**180 dys**[3]

[1]w/n 7 yrs

[2]A "driving record" consists of any one of the following: (1) Two or more convictions for 2 point violations w/n 12 months; three or more convictions for 1 point violations w/n 12 months; (3) three or more "reportable" accidents w/n 12 months; or (4) any combination of convictions/accidents which results in 3 points w/n 12 months.

[3]Imprisonment is in the county jail.

[4]This penalty is "consecutive" to any other sanction(s) imposed by law. Veh. Code §14601.3(e)(3)

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	For "habitual traffic offender" status based on veh. homicide or DWI offenses: **$2,000** For "habitual traffic offender" status based on vehicle operation while susp/rev and after accumulating a "driving record": 1st off-**$1,000**; 2nd and sub off (w/n 7 yrs)-**$2,000**
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**Yes** Govt. Code §27491.25
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**Yes**
Pedestrian:	**Yes**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** Bus. & Prof. Code §§25658 & 25662 (Year Eff: 1933)
Minimum Age (Years) Possession:	**21** Possession in a public place; exception, possession under 21 is legal if the minor is acting via a parent's order. Bus. & Prof. Code §§25658 & 25662
Minimum Age (Years) Consumption:	**21** This applies only to consumption of alcohol on the premises of licensed "on sale" establishments. Bus. & Prof. Code §§25658 & 25662

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** The law is limited to the serving of alcoholic beverages to obviously intoxicated minors. Bus. & Prof. Code §§25602 & 25602.1 and Civil Code §1714
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** Note: See Bus. & Prof. Code §25602(c) & 25602.1, Civil Code §1714 and *Cory v. Shierloh,* 629 P.2d 8, 174 Cal. Rptr. 500 (1981).

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:	**No** Bus. & Prof. Code §25602(c) & 25602.1, Civil Code §1714(c), *Cory v. Shierloh,* 629 P.2d 8 (Cal. 1981), *Strang v. Cabrol,* 691 P.2d 1013 (Cal. 1984), and *Zieff v. Weinstein,* 236 Cal.Rptr. 536 (Cal.App. 1 Dist. 1987)
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** Bus. & Prof. Code §25602
Term of Imprisonment:	Not more than **6 mos** Bus. & Prof. Code §25617
Fine ($ Range):	Not more than **$1,000** Bus. & Prof. Code §25617
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** susp or rev Bus. & Prof. Code §24200
Length of Term of License Withdrawal:	The length of susp/rev is not fixed by statute.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	See Footnote No. 1.
Type of Criminal Action:	**Misd** Cal. Const. Art. 20, §22 and Bus. & Prof. Code §25658(a)
Term of Imprisonment:	**None**[2]
Fine ($ Range):	**$1,000** (mand) Bus. & Prof. Code §25658(d)(2)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** susp or rev Bus. & Prof. Code §24200
Length of Term License Withdrawal:	The length of susp/rev is not fixed by statute.
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** Veh. Code §§23222, 23223, 23225 & 23226
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers Veh. Code §§23220 & 23221

[1]A defendant must also perform at least 24 hrs of community service. Bus. & Prof. Code §25658(d)(2)

[2]**Comment:** Since Bus. & Prof. Code §25658 provides for a sanction, the general penalty provision for a violation of the alcoholic beverage control provisions of the Business & Professions Code (Bus. & Prof. Code §25617) would not apply. The general penalty provision provides for an imprisonment term of not more than 6 mos.

STATE:	**COLORADO**
General Reference:	Colorado Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	I. Under the influence of alcohol §42-4-1301(1)(a) II. Impaired by the consumption of alcohol §42-4-1301(1)(b)
Illegal Per Se Law (BAC/BrAC):	**≥0.10**[1&2] §42-4-1301(2)(a) Persons Under 21 Years Old-**≥0.02 but ≤0.05**[2] (Cl A Traffic Infraction) §42-4-1301(2)(a.5)
Presumption (BAC/BrAC):	**>0.05 but <0.10**[2]-Driving while impaired; **≥0.10**[2]-Driving under the influence §42-4-1301(5)(b) & (c)
Types of Drugs/Drugs and Alcohol:	(1) **Any Drug** or (2) a Combination of Alcohol and Drugs[3] (applies to both driving under the influence and driving while impaired) §§42-4-1301(1)(a) & 42-4-1301(1)(b)
Other:	For Commercial Motor Vehicle Operators, see p. 3-65. It is an offense for habitual drug uses to operate a motor vehicle. The sanctions for this offense are the same as for driving while under the influence. §42-4-1301(1)(c) & (9)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §42-4-1301(6)
Implied Consent Law:	See Footnote No. 4.
Arrest Required (Yes/No):	**No** But, "probable cause" is required. §42-4-1301(7)(a)(II) & (III)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §42-4-1301(7)(a)(III)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §42-4-1301(7)(e)
Other Information:	A persons's blood may be taken from them by force if there is probable cause that they committed criminally negligent homicide with a motor vehicle, vehicle homicide, assault in the third degree with a motor vehicle or vehicle assault. §42-4-1301(7)(a)(IV) & *People v. Shepherd,* 906 P.2d 607 (Colo. 1995)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** (Alc & Drugs) §42-4-1301(7)(a)(II) & (III)
Urine:	**Yes** (For Drugs only) §42-4-1301(7)(a)(III)
Other:	**Saliva** (For Drugs only) §42-4-1301(7)(a)(III)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.
[2]Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §§42-2-126(2)(a)(I) and 42-4-1301(2)(a), (2)(a.5), (5)(b) & (5)(c)
Historical Note: The State's drunk driving and vehicle homicide laws now define alcohol concentration as either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. However, prior to 1989, the vehicle homicide law defined alcohol concentration as "percent by weight" of alcohol in the blood. Despite this statutory language and obvious scientific difference, the Colorado Supreme Court held that "percent by weight" should be interpreted to mean grams of alcohol per 100 milliliters of blood. *Ricstrew v. People,* 822 P.2d 505 (Colo. 1991)
[3]A "drug" is defined as either (1) a substance, that is intended to cure or prevent disease, listed in the U.S. Pharmacopoeia, (2) a controlled substance or (3) toxic vapor or vapors including, but not limited to, glue sniffing and aerosol inhalation. §§12-27-303(7) & (13) and 42-4-1301(1)(d)
[4]This State has an "express consent" law instead of an "implied consent" one. I.e., any person, who operates a motor vehicle in this State, is "deemed to have expressed such person's consent" to submit to chemical test of their either blood, breath, urine or saliva.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No** Note: Deferred prosecution or deferred sentence of drunk driving offenses is available. §§16-7-401 & 16-7-403
Anti-Plea Bargaining Statute (Yes/No):	**Yes**[1] §42-4-1301(8)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alc. and Drug Evaluations Required §42-4-1301(10)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**No**
Administrative Licensing Action (Susp/Rev):	**No**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal-**Rev 1 yr**[2]; 2nd refusal-**Rev 2 yrs**[2]; 3rd or sub. refusal-**Rev 3 yrs**[2] §§42-2-126(2)(a)(II), 42-2-126(6)(b)(III), (VI) & (VII) and 2-4-1301(7)(d) Note: If a person is also convicted of a DWI offense arising our of the same incident, the license revocation or suspension periods for refusal and conviction are to run consecutively. §§42-2-126(6)(c)(II) & 42-4-1301(7)(d).
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:	See Persons Under 21 Years Old on p. 3-66.
Criminal Sanctions:	See Double Jeopardy below. Important. See Sanctions for Driving with BAC/BrAC ≥0.20 under Miscellaneous Sanctions on p. 3-66.
Imprisonment: Term (Day, Months, Years Etc.):	Driving under the influence/illegal per se, 1st Off (Misd)-**5 dys to 1 yr**; 1st Off[3]-**70 dys to 1 yr**; 2nd or subsequent off (w/n 5 yrs)-**90 dys to 1 yr**; Driving while impaired (Misd)-1st Off-**2 dys to 180 dys**; 1st Off[4]-**60 dys to 1 yr**; 2nd or subsequent off (w/n 5 yrs)-**45 dys to 1 yr** §42-4-1301(9) Injury Related DWI Off (Vehicle Assault) (Class 4 Felony)-**2 to 6 yrs** §§18-1-105 & 18-3-205

[1]The court cannot except a guilty plea to a non-alcohol or non-drug related traffic offense in lieu of a drunk driving offense unless the prosecutor makes a good faith representation that they could not establish a *prima facie* case on the original charge.
[2]These revocation periods are mandatory unless a person participates in the **"ignition interlock"** program (repealed 7/1/98). Such a participant is eligible for probationary driving privileges after the following mandatory revocation periods: 1st refusal-**3 mos**; 2nd refusal-**6 mos**; and, 3rd or sub. refusal-**9 mos**. §42-2-126.1 For further details, see Ignition Interlock Program on p. 3-65.
[3]But where there has been w/n 5 yrs a conviction for a driving while impaired off.
[4]But where there has been w/n 5 yrs a conviction for a driving while under the influence off/illegal per se.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Deutschendorf v. People,* 920 P.2d 53 (Colo. 1996)

Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term:	Driving Under the Influence-1st off-**5 dys**[1]; Illegal per se-1st off-**5 dys**; Driving under the Influence/Illegal per se-1st off[2]-**70 dys (7 dys**[3]); Driving under the Influence/Illegal per se-2nd or sub off (w/n 5 yrs)-**90 dys (7 dys**[3]); Driving While Impaired-1st off-**2 dys**[1]; Driving While Impaired-1st off[4]-**60 dys (6 dys**[3]); Driving While Impaired-2nd or sub. off-**45 dys (5 dys**[3]) §42-4-1301(9)
Fine:	
Amount ($ Range):	Driving under the influence/illegal per se, 1st Off-**$300 to $1,000**; 1st Off[1]-**$450 to $1,500**; 2nd or subsequent off (w/n 5 yrs)- **$500 to $1,500**; Driving while impaired, 1st Off- **$100 to $500**; 1st Off[2]-**$450 to $1,200**; 2nd or subsequent off (w/n 5 yrs)-**$300 to $1,000** §42-4-1301(9) Injury Related DWI Off (Vehicle Assault) (Class 4 Felony)-**$2,000 to $500,000** See Miscellaneous Sanctions on p. 3-66.
Mandatory Minimum Fine ($):	**None**
Other Penalties:	
Community Service:	Driving under the influence/illegal per se, 1st Off-**48 to 96 hrs** (48 hrs mandatory); 1st Off-**56 to 112 hrs** (56 hrs mand); 2nd or subsequent off (w/n 5 yrs)-**60 to 120 hrs** (60 hrs mand), Driving While Impaired, 1st Off-**24 to 48 hrs** (24 hrs mand), 2nd or subsequent off-**48 to 96 hrs** (48 hrs mandatory) §42-4-1301(9) Persons assigned to community service must pay fee of no more than $60; this is used to keep the community service self-supporting and to purchase insurance. §42-4-1301(9)(g)(V)
Restitution (eg, Victim's Fund):	**Yes** A victims' compensation fund §24-4.1-100.1 et seq. Also, as a condition of probation for a DWI offense, a defendant **shall** be requried to make restitution. §42-4-1301(9)(h) DWI offenders must pay a fee of $25 which is deposited into the crime victims compensation fund. §24-4.1-119(c)
Other:	**Mandatory Parole.** Persons, who have been convicted of Vehicle Assault must be placed on parole for 3 yrs. §18-1-105 **Child Endangerment.** A person is guilty of child abuse if they knowingly or reckless commit an act that either kills or injures a child (a person < 16 yrs old). A person commits a Cl 2 felony where death results from such child abuse and is subject to imprisonment from 8 to 24 yrs and/or a fine from $5,000 to $1,000,000. A person commits a Cl 3 felony where injury results from such child abuse and is subject to imprisonment from 4 to 12 yrs and/or a fine from $3,000 to $750,000. For either felony, there is mandatory parole for 5 yrs. §§18-1-105(1)(a)(III) & (V)(A) and 18-6-401(1), (2), (7)(a)(I) & (III) A drunk driving offender is guilty of child abuse if they either kill or injure a child

[1]There is no mandatory imprisonment sanction if the defendant participates in an alcohol education/treatment program. §42-4-1301(9)(a)(I), (b)(I) & (f)(II)
[2]But where there has been w/n 5 yrs a conviction for a driving while impaired offense.
[3]The mandatory imprisonment sanction is reduced to this number of days of confinement if the defendant participates in an alcohol education/treatment program. §42-4-1301(9)(a)(II), (b)(II) & (III) and (f)(I)
[4]But where there has been w/n 5 yrs a conviction for a driving while under the influence or illegal per se.

Sanctions Following a Conviction for a DWI Offense: (continued)

Other: (continued)	**Child Endangerment.** (continued) who is riding in another vehicle that is involved in a collision with the offender's vehicle at the time of the offense. *People v. Deskins,* 927 P.2d 368 (Colo. 1996)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-62 and the Special Note below. See Persons Under 21 Years Old on p. 3-66.
Administrative Per Se Law:	**Yes** ≥**0.10** (BAC/BrAC See Footnote No. 2 on p. 3-61.) 1st Violation-**Rev 3 mos**[1]; 2nd & Subequent Violations-**Rev 1 yr**[1] §§42-2-126(2)(a)(I) and 42-2-126(6)(b)(I) & (II) Note: If the person is also convicted of a DWI offense, the licensing actions for the admin. per se violation and for the DWI conviction shall run concurrently and the total revocation period shall not exceed the longer of the two (2) periods. §§42-2-125(5) & 42-2-126(6)(c)(I)
Other:	**None**
Post DWI Conviction Licensing Action:	See Persons Under 21 Years Old on p. 3-66.
Type of Licensing Action (Susp/Rev):	Driving while under the influence and illegal per se, 1st off - **Susp/Rev**; Driving while impaired - **Susp/Rev**[2&3] §§42-2-125(1)(b), (g) & (i) & 42-2-127(9)(a) Injury Related DWI Off (Vehicle Assult) - **Rev** §42-2-125(1)(a)
Term of License Withdrawal (Days, Months, Years, etc.):	Driving while under the influence and illegal per se, 1st off-**Susp**[1] Not less than **1 yr**; Driving while impaired, 1st off-**1 yr**[2,3,4,5&6] §§42-2-125(1)(b), (g) & (i), 42-2-127(9)(a) and 42-2-132 Injury Related DWI Off (Vehicle Assault) - **1 yr** §§42-2-125(1)(a) & 42-2-132(2)(a)

[1]The revocation periods for admin. per se violations are mandatory unless a person participates in the **"ignition interlock"** program (repealed July 1, 2000). Such a participant is eligible for probationary driving privileges after the following mandatory revocation periods: 1st violation-**1 mo**; and, 2nd or sub violation-**3 mos** §42-2-126.1 For further details, see Ignition Interlock Program on p. 3-65.

[2]For driving while under the influence, 12 points and, for driving while impaired conviction, eight (8) points are placed on driver's record; generally the accumulation of either 12 points in 12 mos or 18 points in 24 mos results in license susp for not more than 1 yr (or for not less than 1 yr for 1st driving while under the influence offenses) but a probationary-restricted license may be issued. §§42-2-127(1)(a), (5), (12) & 14) and 42-2-132(1)

[3]A conviction for either an impaired, under the influence, or illegal per se off where there has been a previous alcohol driving off conviction of any type within a 5-yr period -- **Rev** §§42-2-125(1)(g) & 42-2-132(2) A conviction for either an impaired, under the influence of illegal per se influence or illegal per se off where there has been two previous alcohol driving off convictions of any type -- **Rev** §42-2-125(1)(i))

[4]A conviction for either an impaired, under the influence, or illegal per se off where there has been a previous alcohol driving off convictions of any type within a 5-yr period -- **Revocation for 1 yr**. §§42-2-125(1)(g) & 42-2-132(2) A conviction for either an impaired, under the influence of illegal per se influence or illegal per se off where there has been two previous alcohol driving off convictions of any type -- **Revocation for an indefinite period**. §42-2-125(1)(i)

[5]A person convicted of operating a vehicle while under the influence of a controlled substance must have their license revoked for a mandatory period of one (1) year for a 1st off. §§42-2-125(1)(b) & (2) and 42-2-132(2)

[6]For a 1st off, a person <21 yrs old or a provisional driver must have their license revoked for 1 yr. §§2-4-402(b), 42-2-125(g) & 42-2-132(2)

Special Note: The administrative per se law does not violate a person's constitutional right to due process of law. *Nefizger v. Department of Revenue,* 739 P.2d 224 (Colo. 1987)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of Withdrawal:	Driving while under the influence and illegal per se, 1st off -**None**[1]; Driving while impaired, 1st off-**None** See Footnote Nos. 2 and 3. Injury Related DWI Off (Veh. Assault)-**1 yr**
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** §42-4-1301(9)
Alcohol Treatment:	**Yes** §42-4-1301(9)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**None**
Terms Upon Which Vehicle Will Be Released:	
Other:	

[1]A 1 yr probationary-restricted license may be issued for reasons of employment/alcohol education, et al. This license is renewal for additional 1 yr periods. §42-2-127(12) & (14)
[2]**Special Note:** If the first offender is a minor, a person under 21 yrs old (§2-4-402(b)), their license must be revoked for a 1 yr period. §§42-2-125(1)(g) & 42-2-132(2)
[3]Except for persons who participate in the **"ignition interlock"** program (see below), the following mandatory licensing actions apply. I. A conviction for either an impaired, under the influence, or illegal per se off where there has been a previous alcohol driving off conviction of any type w/n a 5-yr period-**Rev 1 yr**. §§42-2-125(1)(g) & 42-2-132(2) II. A conviction for either an impaired, under the influence of illegal per se influence or illegal per se off where there has been two previous alcohol driving off convictions of any type-**Rev 2 yrs**. §42-2-125(1)(i) & *Rogers v. Dept. of Revenue,* 841 P.2d 369 (Colo.App. 1992)

Ignition Interlock Program. I. A person is eligible to participate in the "ignition interlock" program if the revocation was based on alcohol related driving and they accept the following conditions. (1) They agree to only operate motor vehicles that are equipped with an ignition interlock device. And, (2) they agree to have any license revocation period remaining after the mandatory period converted to a license suspension. This suspension period is to be twice the remaining revocation period with at least a minimum suspension period of 6 mos. II. A person, who participates in the "ignition interlock" program and who is subject to a license revocation for either **3 mos, 1 yr, 2 yrs, 3 yrs, 4 yrs or 5 (or more) yrs** may be issued a probationary license after they have completed respectively either **1 mo, 3 mos, 6 mos, 9 mos, 1 yr or 2 yrs** of the revocation period. III. A probationary license can only be issued for 1 yr; however, it is renewable for additional 1 yr periods. Important: The "ignition interlock" program is repealed July 1, 2000. §42-2-126.1

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege (i.e., their CDL) to operate a CMV is "revoked" for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration or drug content. (Note: For a 1st offense of operating a CMV "while under the influence of alcohol", the normal DWI license suspension sanctions apply. As a result, a person may be eligible for a probationary license for this offense. However, a person is not eligible for "probationary CDL" in circumstances where they operated a CMC with a BAC ≥0.04 but <0.10). For a either (1) a subsequent violation or (2) a combination of two or more violations of either driving while under the influence of alcohol or of any of the above listed items, the CDL is "cancelled" for life (10 yrs mand). In addition, a person who has any alcohol in their system is placed "out-of-service" for 24 hours. §§42-2-125(1)(b) & (2), 42-2-126(2)(a)(II) & (III), (6)(b)(III), (6)(b)(IV), (6)(b)(V) & (7)(a)(I), 42-2-127(1)(a) & (5)(b), 42-2-402(4) & (8) and 42-2-405 Persons <21 Years Old. A person <21 yrs old, who operates CMV with a BAC/BrAC ≥0.02 but <0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), is subject to the following license revocations: 1st off-**3 mos** (30 dys mand with restricted driving privileges for the remainder of the revocation period); 2nd off-**6 mos** (mand); and 3rd or sub off-**1 yr** (mand). §42-2-126(2)(a)(IV) & (6)(b)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

I. A DWI offender may be sentenced to attend a "victim impact panel" for which they may be assessed a fee of not more than $25. §42-4-1301(9)(h)
II. A DWI offender is required to pay $75 (deposited into the Law Enforcement Assistance Fund) and $15 (deposited into the county treasury). §43-4-402(1)
III. A DWI offender is assessed the "cost" for alc/drug evaluation and supervision services. §42-4-1301(10)(d)
IV. For misd. offenses, persons are assessed a surcharge of either 37% of the fine imposed or $40 whichever is the greater amount. For felony offenses, persons are assessed a surcharge of either 37% of the fine imposed or $100 whichever is the greater amount. §24-4.2-104(1)(a)(I)
V. **Traffic School.** A person, who violates the State's traffic laws, may be ordered by the court to attend a course of instruction on traffic laws, hazardous driving situations and accident prevention. §42-4-1717
VI. **Sanctions for Driving with BAC/BrAC ≥0.20.** If a driving while under the influence is reduced to driving while impaired but the defendant's BAC/BrAC was ≥**0.20**, the sanctions imposed must, nevertheless, be for the former (greater) offense. §42-4-1301(9)(b)(IV)
VII. **Persistent Drunk Driver Surcharge.** All drunk driving law offenders must pay a surcharge of **not less than $25 nor more than $500** to fund the Persistent Drunk Driver Cash Fund. §42-4-1301(9)(g)(II)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Reckless Driving Vehicle Homicide **Cl 4 Felony** §18-3-106(1)(a) & (c)
DWI Vehicle Homicide[1] **Cl 3 Felony** §18-3-106(1)(b) & (c)

[1]Homicide related to "driving under the influence" of alcohol or drugs. As used in this offense, "driving under the influence" means the operation of a vehicle by a person who has consumed alcohol or drugs to such a degree that they are "substantially incapable, either mentally or physically, or both mentally and physically, of exercising clear judgment, sufficient physical control, or due care in the safe operation of a vehicle." §18-3-106(1)(b)(IV) There is a rebuttable presumption that a person was under the influence of alcohol if they have an alcohol concentration of 0.10 or more. §18-3-106(2)(c) See Footnote Nos. 1 & 2 on p. 3-61.
Persons Under 21 Years Old. I. Infraction. A person <21 yrs old, who operates a motor vehicle with a BAC/BrAC ≥**0.02 but** ≤**0.05** commits a Cl A Traffic Infraction and is subject to a fine of **$50**. §§42-4-1301(2)(a.5) & 42-4-1701(4)(a)(I)(N) In addition, a person, who has been convicted of this offense is subject to license revocation for the following periods: 1st off-**3 mos** (30 dys mand with restricted driving privileges for the remainder of the revocation period); 2nd off-**6 mos** (mand); and 3rd or sub off-**1 yr** (mand). §42-2-125(1)(g.5), (2.5) & (2.7) II. Administrative Action. A person <21 yrs old, who operates a motor vehicle with a BAC/BrAC ≥**0.02 but <0.10**, is subject to license revocation via independent administrative action. §42-2-126(2)(a)(I.5) Via such action, a person's license is subject to license revocation for the following periods: 1st off-**3 mos** (mand) (However, if the person's BAC/BrAC was ≤0.05, they are only subject to a 30 dys mand rev with suspension and restricted driving privileges for the remainder of the 3 mon period.); 2nd off-**6 mos** (mand); and 3rd or sub off-**1 yr** (mand). §42-2-126(6)(b) III. A person under 21 yrs old, who has been convicted of driving a motor vehicle with a BAC/BrAC ≥0.02 but ≤0.05, has 5 points assessed against their driving record. §42-2-127(5)(b)(IV)

Other Criminal Actions Related to DWI: (continued)

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Cl 4 Felony **2 to 6 yrs** (presumptive range) §18-1-105(1)(a)(V)(A) Cl 3 Felony **4 to 12 yrs** (presumptive range) §18-1-105(1)(a)(V)(A)
Mandatory Minimum Term:	**None**[1]
Fine ($ Range):	Cl 4 Felony **$2,000 to $500,000** §18-1-105(1)(a)(III)(A) Cl 3 Felony **$3,000 to $750,000** §18-1-105(1)(a)(III)(A)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §§42-2-125(a) & 42-2-128
Length of Term of Licensing Withdrawal:	**1 yr** §42-2-132(2)(a)
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr** §42-2-132(2)(a)
Other:	Cl 4 Felony-Mandatory probation for 3 yrs §18-1-105(1)(a)(V)(A) Cl 3 Felony-Mandatory probation for 5 yrs §18-1-105(1)(a)(V)(A) See Traffic School above.

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. 2 below and Traffic School on p. 3-66. See Vehicle Forfeiture on p. 3-68.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd** 1st off-**30 dys to 1 yr**; 2nd and subsequent offs-**90 dys to 2 yrs** §42-2-138(1)(d)(I)
Mandatory Minimum Term of Imprisonment:	1st off-**30 dys**; 2nd and subsequent offs-**90 dys** §42-2-138(1)(d)(I)
Fine ($ Range):	1st off-**$500 to $1,000**; 2nd and subsequent offs-**$500 to $3,000** §42-2-138(1)(d)(I)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	For a 2nd or subsequent offense w/n 5 yrs, the driver is not "eligible" for driving privileges. §42-2-138(1)(e)
Length of Term of License Withdrawal Action:	2nd and subsequent offenses-**4 yrs** §42-2-138(1)(e)
Mandatory Term of License Withdrawal Action:	2nd and subsequent offenses-**4 yrs** §42-2-138(1)(e)

[1]A vehicle homicide offender, who commits such offense while fleeing from another felony, must be sentenced at the mid-point range of the above presumptive ranges but not more than twice the maximum sentence. §18-1-105(9)(g)

[2]The sanctions given for driving while license is suspended or revoked for a drunk driving offense also apply to persons who operate a CMV during a CDL revocation or cancellation. §42-2-138(1)(d) However, the regular sanctions for the misd offense of driving while license is either suspended or revoked appear to apply to situations concerned with operating a CMV while under a CDL out-of-service order; for this offense, an offender is (1) subject to a jail term of 5 dys (mand) to 6 mos and/or a fine of $50 (mand) to $500 and (2), for a 2nd offense (w/n 5 yrs), is ineligible for a license for 3 yrs. §42-2-138(1)(a)

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:	See Traffic School on p. 3-66.
State Has Such a Law (Yes/No):	**Yes** §42-2-201 et seq.
Grounds for Being Declared an Habitual Offender:	(1) 3 or more serious offs within 7 yrs, (2) 10 or more convictions for offs of 4 points or more within 5 yrs or (3) 18 or more convictions of 3 points or less within 5 yrs. §42-2-202
Term of License Rev While Under Habitual Offender Status:	**Rev 5 yrs**[1] §42-2-205
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Cl 6 Felony** §42-2-206 See Vehicle Forfeiture below.
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**1 to 18 mos**[2] §18-1-105(1)(a)(V)(A)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$1,000 to $100,000** §18-1-105(1)(a)(III)(A)
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §42-4-1304
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** (15 years of age or older)

[1]This revocation period is mandatory unless a person participates in the "**ignition interlock**" program. Such a participant is eligible for probationary driving privileges after a **2 yr** mand rev. §42-2-126.1 For further details, see Ignition Interlock Program on p. 3-65. If the revocation was based primarily on non drunk driving offenses, the offender must agree to only operate a vehicle for the purpose of going to and from a place of employment. §42-2-126.1(2)(e)
[2]An offender is also subject to mandatory probation for 1 yr. §18-1-105(1)(a)(V)(A)

Vehicle Forfeiture. A vehicle used in the commission of a "felony" is subject to *in rem* civil forfeiture. §§16-13-302 & 16-13-303(1)(i) Via this law, the State was able to obtain forfeiture a driver's vehicle based upon the offense of driving after license revocation. Subsequently, such driver was subjected to criminal prosecution for such behavior. The court held that the subsequent criminal prosecution did not constitute double jeopardy. *People v. Ferrel,* 929 P.2d 65 (Colo.App. 1996) **Comment:** Driving while either suspended or revoked may be either a misdemeanor (e.g., §42-2-138) or a felony (e.g., §42-2-206) depending on the law violated. In *Ferrel*, the court did not state what criminal statute the offender had violated.

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §12-47-901 (Year Eff: 1987)
Minimum Age (Years) Possession:	**21** Applies to possession in public places and motor vehicles. There is an exemption for possession on private property with parental consent or for religious purposes. §§12-47-901 & 18-13-122
Minimum Age (Years) Consumption:	**21** There is an exemption for consumption on private property with parental consent or for religious purposes. §18-13-122

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** §12-47-801[1&2] Under this law, a licensee is liable for the injuries caused by a patron if the sale or service of alcoholic beverages was "willfully and knowingly" made either to such patron who was either under 21 years old or who was visibly intoxicated person.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	Note: Dram shop case law (e.g., *Kerby v. Flamingo Club, Inc.*, 532 P.2d 975 (Colo. 1974)) has been abrogated by legislation. §12-47-801(1).
Dram Shop Actions-Social Hosts:	**Yes (Limited)** §12-47-801(4)[1&2] Liability is limited to the actions of those under the legal drinking age. Under the dram shop law, the service of alcoholic beverages must be "willfully and knowingly" made to persons under 21 yrs old.
Other:	**None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:	**Class 2 Misd** §§12-47-901(1)(a) & (5)(a)(I) and 12-47-903(2)
Term of Imprisonment:	**3 to 12 mos** §18-1-106
Fine ($ Range):	**$250 to $1,000** §18-1-106

[1]There is a separate dram shop law, §13-21-103, which provides that "[e]very husband, wife, child, parent, guardian, employer, or other person who is injured in person, or property, or means of support by any intoxicated person, or in consequence of the intoxication of any person, has a right of action, in his name, against any person who, by selling or giving away intoxicating liquors to any habitual drunkard, causes the intoxication, in whole or in part, of such habitual drunkard." Note: The law does not appear to put a monetary limit on the amount of damages that can be recovered under this law.

[2]Damage awards are limited to $150,000. §12-47-801(3)(c) & (4)(c) However, these limits are adjusted each year to reflect the effects of inflation. §§2, 3, & 4 of Chapter 172, Session Laws of 1997, amending respectively §§12-46-112.5, 12-47-128.5 & 13-21-102.5

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or Rev** §12-47-601(1) See the Special Note below.
Length of Term of License Withdrawal:	**Susp**-Not more than **6 mos**[1]; **Rev**-Period not specified in the statutes
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Class 2 Misd** §§12-47-901(1)(a) & (5)(a)(I) and 12-47-903(2)
Term of Imprisonment:	**3 to 12 mos** §18-1-106
Fine ($ Range):	**$250 to $1,000** §18-1-106
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp** or **Rev** §12-47-601(1) See the Special Note below.
Length of Term License Withdrawal:	**Susp**-Not more than **6 mos**[1]; **Rev**-Period not specified in the statutes.
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** - Driver and passengers[2] §12-47-901(1)(h) The law states that "it is unlawful for any person: to consume malt, vinous, or spiritous liquor in a public place." Of course, licensed premises are excepted.

[1]Summary suspension is allowed for not more than 15 days. §12-47-601(2)
[2]There is an exception for passengers at least 21 yrs old who are riding in either a luxury limousine or a chartered bus.

Special Note: If lieu of license suspension, the licensee may be allowed to pay an administrative fine. The fine shall be 20% of the estimated gross revenues of the sale of either alcoholic beverages or fermented malt beverages over the period of the proposed suspension. However, such a fine must be at least $200 but cannot be more than $5,000. §12-47-601(3)

STATE:	**CONNECTICUT**
General Reference:	Connecticut General Statutes Annotated and Regulations of Connecticut State Agencies (RCSA)

Basis for a DWI Charge:

Standard DWI Offense:	I. Under the influence of intoxicating liquor[1] §14-227a(a) II. Impaired by the consumption of intoxicating liquor §14-227a(b)
Illegal Per Se Law (BAC):	≥**0.10**[2] §14-227a(a)(2)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** or (2) Any Drug and Intoxicating Liquor[1] §14-227a(a) Note: The impaired offense applies only to impairment by alcohol.
Other:	A person is "deemed" driving while impaired if they have a BAC **>0.07** but **<0.10**[2] §14-227a(b) For Commercial Motor Vehicle Operators, see p. 3-73.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§14-227b & 14-227g(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §14-227b(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §14-227a(f)
Other Information:	**None**

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §14-227(d)
Urine:	**Yes** §14-227(d)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**[3]
Anti-Plea Bargaining Statute (Yes/No):	**No** However, the law does require the State to give to the court, in open session, the reasons why a DWI charge was reduced or dismissed. §14-227a(g)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**[4]

[1]The sanctions listed below for driving while "under the influence" apply to driving while under the influence of either intoxicating liquor (alcohol) or drugs.
[2]Standard: Percent by wgt. of alcohol in the blood. §§14-227a(a) & (b) and 14-227g(b)
[3]A pre-trial diversion program is available only for first DWI offenders. §§54-56g & 54-56e See the Rehabilitation Section on p. 3-74.
[4]A court may but is not required to conduct a pre-sentence investigation. The law is silent as to whether "alcohol screening" has to be given to persons convicted of a drunk driving offense. §54-91g

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st action (refusal)-**Susp 6 mos** (90 dys mand)[1]; 2nd action (refusal)[2]-**Susp 1 yr** (mand); Sub action (refusal)[2]-**Susp 2 yrs** (mand) §14-227b(h) Under §54-56g(b), a person's participation in an alc. or treatment program does not effect the mand. lic. susp. Furthermore, for a 2nd or subsequent refusal, the person must satisfactorily complete an alcohol treatment program before their driving privileges can be reinstated. §5 of Public Act No. 95-314[3]
Other:	**Special Note:** If a driver either has a BAC ≥0.10 or refuses to submit to the chemical test, the police dept. must temporarily rev the driver's license for 24 hrs. §§14-227a(F) & 14-227b(c)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy below.
Imprisonment:	Under the Influence/Illegal per se: 1st off (misd)-Not more than **6 mos**; 2nd off (w/n 10 yrs) (misd)-Not more than **1 yr**; 3rd off (w/n 10 yrs) (felony)-Not more than **2 yrs**; 4th or sub off (w/n 10 yrs) (felony)-Not more than **3 yrs** §§14-227a(h), 53a-25 & 53a-26 Driving While Impaired (Infraction)-**None** Veh Assault-Cl D felony (See Persistent Offender on p. 3-76.) Not more than **5 yrs** §§53a-35a & 53a-60d
Mandatory Minimum Term:	Under the Influence/Illegal per se: 1st off-**48 con hrs**; 2nd off-**10 con dys**; 3rd off-**120 con dys**; 4th and sub offs-**1 yr**
Fine:	
Amount ($ Range):	Under the Influence/Illegal per se: 1st off (misd)-**$500 to $1,000**; 2nd off (w/n 10 yrs) (misd)-**$500 to $2,000**; 3rd off (w/n 10 yrs) (felony)-**$1,000 to $4,000**; 4th or sub off (w/n 10 yrs) (felony)-**$2,000 to $8,000** §§14-227a(h), 53a-25 & 53a-26 Driving While Impaired (Infraction)-Fines are via a schedule established by the courts. §51-164m Veh Assault-Cl D felony-Not more than **$5,000** §§53a-41 & 53a-60d

[1]After the 90 day mand period, a person is eligible for a "special permit" based on "a showing of significant hardship" to operate a motor vehicle either to and from a place of employment or, if necessary, in the course of a business or profession. §14-37a
[2]A previous action includes a prior administrative per se action. §14-227b(h)
[3]This section of Public Act 95-314 is located in the 1996 Appendix Pamphlet to the Connecticut General Statutes Annotated.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Hickam,* 668 A.2d 1321 (Conn. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Fine ($):	**None**
Other Penalties:	
Community Service:	Under the Influence/Illegal per se: 1st off-**100 hrs** in lieu of the 48 con hrs of mandatory imprisonment For this alternative, the entire jail sentence is suspended and the required community service is to be performed as a part of probation.[1] §§14-227a(h) & 14-227e
Restitution (eg Victim's Fund)	**Yes** Criminal injuries compensation fund §§54-209 & 54-215
Other:	**Special Cost.** A special cost of **$15** is imposed for a DWI offense conviction. §54-143(a) **Incarceration Cost.** A defendant may be required to pay the cost of their incarceration. §18-85a
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-72.
Administrative Per Se Law:	**Yes** ≥**0.10** (BAC) (See Footnote No. 2 on p. 3-71 for the BAC standard.) §14-227b(c) 1st action-susp-**90 dys**[2]; 2nd action[3]-susp-**1 yr** (mand); sub. action[3]-susp **2 yrs** (mand) §14-227b(b) & (h) Under §54-56g(b), a person's participation in an alc. or treatment program does not effect the mandatory license suspension. Persons Under 21 Years Old. BAC **>0.02 but <0.10**[4]-Susp-**90 dys**[5] §14-227g(b) & (c)
Other:	Under §14-111(a), a person's license may be susp for any cause the licensing agency "deems sufficient". Such action may be taken with or without a preliminary hearing. The law does not specify he length of this susp. **Special Note:** The police may take and hold a driver's license for 24 hrs if the driver has a BAC ≥0.10. §14-227a(b)

[1]Under separate provisions of law, an offender, who is sentenced to probation, may be required to perform community service. §53a-28(e)

[2]A person is eligible for a "special permit" based on "a showing of significant hardship" to operate a motor vehicle either to and from a place of employment or, if necessary, in the course of a business or profession. §14-37a **Special Note:** Under proposed regulations dated September 13, 1993, by the Commissioner of Motor Vehicles, the first 30 dys of the susp period would be mand.

[3]A previous action includes a prior refusal to submit to a chemical test. §14-227b(h)

[4]Important. If the BAC was the result of the consumption of alcoholic beverages either on the order of a physician or by a parent, guardian or spouse under §30-86, there is no licensing action. §14-227g(c)

[5]**Comment:** The law does not specify whether this license suspension is mandatory. However, since §14-227g is codified under Chapter 248 of the Connecticut Statutes, a "special permit" may be available for employment purposes "upon a showing of significant hardship". §14-37a

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's License (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs mand if transporting hazardous materials) if, while operating CMV, they (1) have a BAC ≥0.04 (Standard: Percent of alcohol by weight in the blood), (2) are convicted of driving while under the influence of intoxicating liquor or drugs or (3) refuse to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life. The lifetime "disqualification" may be reduced to 10 yrs (mand) if certain conditions are satisfied. Note: A person is not eligible for a "special permit" based on hardship. §§14-1(a)(11), (16) & (18), 14-37a and 14-44k

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): Under the Influence/Illegal per se: For 1st, 2nd and 3rd offs-**Susp**; 4th or subsequent off-**Rev** §14-227a(h) Driving While Impaired-**None** Veh Assault (DWI off)-**Susp** §53a-60d See Persons Under 18 Years Old below.

Term of License Withdrawal (Days, Months, Years, etc.): Under the Influence/Illegal per se: 1st off-**1 yr**; 2nd off-**2 yrs**; 3rd off-**3 yrs**; 4th or subsequent off-**Permanently** Driving While Impaired-**None** Veh Assault (DWI off)-**1 yr** See Footnote No. 2.

Mandatory Minimum Term of Withdrawal: Under the Influence/Illegal per se: 1st & sub offs-**None**[1&2] Driving While Impaired-**None** Veh Assault (DWI off)-**1 yr**

Persons Under 18 Years Old. Under §14-227a(j), a person, under 18 years old, who is convicted of any DWI offense, has their license suspended either until they are 18 or for the normal suspension period for the offense convicted of which ever is the longer suspension period. Of course, persons under 18 years old can also have their driver's license revoked permanently for a 4th or sub drunk driving offense conviction.

Other:

Rehabilitation:

Alcohol Education: **Yes** For all DWI criminal offs §14-227a(k)

Alcohol Treatment: **Yes** For all DWI criminal offs §14-227a(k) Note: Persons charged with a 1st DWI offense (any type) may be allowed to participate in an accelerated pre-trial rehabilitation/alcohol education program. If a defendant satisfactorily completes this program, the court may dismiss the drunk driving charges. §§54-56e & 54-56g Furthermore, for a 2nd or subsequent conviction, persons must satisfactorily complete an alcohol treatment program before their driving privileges can be reinstated. §14-227f

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **None**

Terms Upon Which Vehicle Will Be Released:

Other: **Limited Impoundment.** The vehicle driven by a person, who has been arrested for driving either while under the influence of intoxicating liquor or with a BAC level ≥0.10, shall be impounded for 48 hrs if the person's driving privilege was either suspended or revoked at the time of the offense. §2 of Public Act. No. 97-291

[1]Note: The law does not specifically prohibit a court from reducing these susp periods.

[2]**Special Note:** These licensing actions are not mandatory. Based upon "a showing of significant hardship", a person is eligible for a "special permit" which may be used to operate a motor vehicle either to and from a place of employment or, if necessary, in the course of a business or profession. §14-37a If a person is convicted of driving while under the influence of intoxicating liquor while operating a motor vehicle on a "special permit", the period of revocation is twice as long as indicated above. §14-227a(j)(1)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions Not Included Elsewhere:	See Civil Damages below.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** I. If DWI Related, **Cl C felony** A person is guilty of manslaughter with a motor vehicle when, while operating a motor vehicle under the influence of intoxicating liquor or any drug or both, they cause the death of another person. §53a-56b II. Causing the death of another person while operating a motor vehicle with criminal negligence. **Cl D felony** §53a-57[2] III. Causing the death of another person while operating a motor vehicle with negligence. **Unclassified Misd** §§53a-26 & 14-222a[2]
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	I. Cl C felony: **1 to 10 yrs** II. Cl D felony: **1 to 5 yrs** III. Unclassified Misd: **Not more than 6 mos** §§14-222a, 53a-26, 53a-35a & 53a-56b
Mandatory Minimum Term:	**None**
Fine ($ Range):	I. Cl C felony: **Not more than $10,000** II. Cl D felony: **Not more than $5,000** III. Unclassified Misd: **Not more than $1,000** §§14-222a, 53a-26, 53a-41 & 53a-56b
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	I. Cl C felony: **Susp** §53a-56b II. Cl D felony: See Footnote Nos. 2 & 3. III. Unclassified Misd: See Footnote Nos. 2 & 3.
Length of Term of Licensing Withdrawal:	I. Cl C felony: **1 yr** §53a-56b II. Cl D felony: See Footnote Nos. 2 & 3. III. Unclassified Misd: See Footnote Nos. 2 & 3.
Mandatory Action--Minimum Length of License Withdrawal:	I. Cl C felony: **1 yr**[1] §53a-56b II. Cl D felony: See Footnote Nos. 2 & 3. III. Unclassified Misd: See Footnote Nos. 2 & 3.
Other:	See Civil Damages below.

[1]A person is not eligible for a "special permit" based on an occupational hardship. §14-37a
[2]**Historical Note:** Sec. 14-111(c), which imposed a licensing sanction (a susp for not less than 1 yr) for a violation of the motor vehicle laws related to a fatal accident (such as a violation of either §53a-57 or §14-222a), has been repealed. §23 of Public Act No. 95-260
[3]A suspension for a violation of §14-222a is via the point system. **Five** (5) **points** are assessed for a violation of this law. A **susp for 30 dys** is imposed if a person accumulates **> 10 points** w/n a 24 mo period. §14-137a and RCSA §§14-137a-5(e)(2) & 14-137a-8
Comment: There does not appear to be a specified licensing sanction for a violation of §53a-57. However, it may be possible to impose a license suspension for a violation of §53a-57 via §14-222a since this latter section is considered a lesser included offense of §53a-57. *State v. Klutts,* 521 A.2d 178 (Conn.App. 1987)

Civil Damages. (1) Either a person injured in person or property in a drunk driving related traffic accident or (2) a plaintiff in a wrongful death action related to a drunk driving offense may be entitled to double or treble civil damages provided the defendant was operating a motor vehicle deliberately or reckless in violation of the drunk driving laws. §14-295

Other Criminal Actions Related to DWI:
(continued)

Other: (continued)	**Community Service.** An offender, who is sentenced to probation, may be required to perform community service. §53a-28(e) **Persistent Offender.** A person, who has been convicted of DWI manslaughter or DWI Assault and who has a previous conviction for either of these offenses or a drunk driving violation under §14-227a w/n 10 yrs, may be incarcerated at the next higher level felony offense. §1 of Public Law 97-291 Note: Cl B felony-1 to 20 yrs. §53a-35a
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote Nos. 1 & 2.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd** Not more than **1 yr**[3] §§14-215(c) & 53a-26(a)
Mandatory Minimum Term of Imprisonment:	**30 con dys**[3] §14-215(c)
Fine ($ Range):	**$500 to $1,000**[3] §14-215(c)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	1st off-**Susp**[3]; Subsequent off (w/n 10 yrs)[3&4]-**Susp** §14-111(b)
Length of Term of License Withdrawal Action:	1st off-**Not less than 1 yr**[3]; Subsequent off (w/n 10 yrs)-**Not less than 5 yrs**[3] §14-111(b)
Mandatory Term of License Withdrawal Action:	Licensing action appears to be mandatory.[5] However, the licensing agency may have some authority to modify or cancel a suspension or revocation. §14-111(k) **Special Note:** An offender, who is sentenced to probation, may be required to perform community service. §53a-28(e)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	

[1]The Commercial Motor Vehicle Law prohibits a person from operating a CMV if they have been disqualified. A person convicted of this offense appears to have committed a violation; the sanction for this offense is a fine sanction of ≤$100. §§14-44k(a), 14-164 & 53a-27(a)

[2]A person who operates a CMV after they have been place "out-of-service" is subject to the following CDL disqualification periods: 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 (mand) to 5 yrs; 3rd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. If the offender was transporting passengers or hazardous materials, the disqualification periods are as follows: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. §14-44k(g)(1) & (2) In addition, such an offender is subject to a civil penalty of $1,000 to $2,500. §14-44k(g)(3)

[3]The sanctions given also apply to persons who operate a motor vehicle after their driving privileges have been suspended for an implied consent law violation.

[4]§§14-1(69) & 14-212(1)

[5]A person is not eligible for a "special permit" based on an occupational hardship. §14-37a

Other Criminal Actions Related to DWI:
(continued)

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status
Sanctions Following a Conviction of Driving While on Habitual Offender Status:
Imprisonment (Term):
Mandatory Minimum Term of Imprisonment:
Fine ($ Range):
Mandatory Minimum Fine ($):
Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**Yes** §14-227c
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1985) §§30-1(12) & 30-86
Minimum Age (Years) Possession:	**21** §30-89(b) Note: Applies only to possession in a public place. Exceptions: Employment or under an order of a physical or while accompanied by a parent or legal guardian who is over 21 years of age.
Minimum Age (Years) Consumption:	**None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** §30-102[1]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes Limited** In situations where there has been wanton and reckless misconduct in either the selling or furnishing of alcoholic beverages, a common law negligence action can be maintained. *Kowal v. Hofler,* 436 A.2d 1 (Conn. 1980), & *Boehm v. Kish,* 517 A.2d 624 (Conn. 1986).

[1]For the same incident, the dram shop law limits damages to $20,000 per person up to an aggregate amount of $50,000 for all persons. These limits on damages were held to be constitutional. *Sanders v. Officer's Club of Connecticut,* 493 A.2d 184 (Conn. 1985)

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:	**Yes** *Kly v. Murphy,* 540 A.2d 54 (Conn. 1988) Applies to the actions of intoxicated minor guests.[1] For wanton and reckless misconduct in the furnishing of alcoholic beverages, see the above cases.
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** §30-86
Term of Imprisonment:	Not more than **1 yr** §30-113
Fine ($ Range):	Not more than **$1,000** §30-113
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev** §30-55
Length of Term of License Withdrawal:	Not stated in the statute
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** §30-86[2]
Term of Imprisonment:	Not more than **1 yr** §30-113
Fine ($ Range):	Not more than **$1,000** §30-113
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp of rev** §30-55
Length of Term License Withdrawal:	Not stated in the statute
Anti-Happy Hour Laws/Regualtions:	**No**[3]
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**No**

[1]In applying *Kly* case, the Connecticut Supreme Court has also held that bar patrons, who provided alcoholic beverages to minors, can be held liable for injuries caused by such minors while intoxicated. *Bohan v. Last,* 674 A.2d 839 (Conn. 1996)

[2]**Special Note:** Any person, except a parent, guardian or physician, who gives/delivers liquors to a minor, shall be fined not more than $1,500 or imprisoned not more than 18 months, or both. §30-86

[3]The law prohibits the alcoholic beverage licensing agency from adopting a regulation that mandates the minimum price above which a permittee is required to sell alcoholic beverages. §30-6a(c)(5)

STATE:	**DELAWARE**
General Reference:	Delaware Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol 21 §4177(a)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1&2] 21 §4177(b)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** or (2) a Combination of Alcohol and a Drug[3] 21 §4177(a)
Other:	Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor[4] 21 §4177L(a) For Commercial Motor Vehicle operators, see p. 3-84. See the Special Note below for DWI and riding a bicycle.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes**[5] 21 §2741
Implied Consent Law:	
Arrest Required (Yes/No):	Probably not 21 §§2740 & 2742(e)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** 21 §2740
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) 21 §2749
Other Information:	I. A person may be required to submit to a chemical test if there is probable cause of a DWI offense. However, if a person is informed of their statutory right to refuse to submit to a test and they exercise this right, a test cannot be administered by involuntary means. 21 §§2740, 2741(b) & 2742(a), *McCann v. State,* 588 A.2d 1100 (Del. 1991), and *Seth v. State,* 592 A.2d 436 (Del. 1991) II. A person must to submit to a chemical test if there is probable cause to believe that they committed a DWI offense that was related to an accident in which there was a death. 21 §2740 **Comment:** In death related DWI situations, it appears that a driver cannot refuse to submit to a test. Therefore, "forced" taking of blood samples for testing purposes may now be possible under these circumstances.

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.
[2]Standard: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 21 §§4177(c)(1) & 4177L(b)
[3]The term "drug" includes (1) those drugs defined in Titles 11 and 16 (e.g., see schedule of controlled substances in Ch. 47 of Title 16) and (2) any substance or preparation which releases intoxicating vapors or fumes. 21 §4177(c)(7)
[4]An alcohol concentration ≥0.02 is "per se evidence" of having consumed alcoholic liquor. 21 §4177L(b) For standards, see Footnote No. 2 above.
[5]**Comment:** The law appears to only indirectly authorize PBT use.

Special Note: Separate provisions of law make it illegal to ride a bicycle while under the influence of either an intoxicating liquor or narcotic drugs. The sanctions for this offense are as follows: 1st off-a fine of $150 to $1,150; subsequent off (w/n 2 yrs of a prior offense)-an imprisonment term of 10 to 30 dys and/or a fine of $400 to $1,500. Note: A violation of this law is not entered on an offender's driver licensing record. 21 §4198J

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** 21 §2740
Urine:	**Yes** 21 §2740
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st Refusal-**Rev 1 yr** (6 mos mand); 2nd Refusal[1] (w/n 5 yrs)- **Rev 18 mos** (mand); 3rd or Sub. Refusals[1] (w/n 5 yrs)-**Rev 24 mos** (mand) 21 §§2742(b)(1) & 2743(a) See the Special Note below and Footnote No. 2 on p. 3-82.
Other:	See Vehicle Impoundment/Confiscation on p. 3-83.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note on p. 3-79 concerning bicycle riders.
Imprisonment:	1st Off (Unclassified Misd 11 §4202(b))-**60 dys to 6 mos**; 2nd off (w/n 5 yrs) (Unclassified Misd 11 §4202(b))-**60 dys to 18 mos**; 3rd off (w/n 5 yrs) (Cl G felony)-**1 to 2 yrs**; 4th and sub off[2] (Cl E felony)-**2 to 5 yrs** 21 §§4177(d) & 4177B(e)(2) Veh Assault-2nd degree-Cl B misd-A DWI related injury where there has been negligent driving-Not more than **6 mos** 11 §§628 & 4206

[1]For the purpose of license sanction enhancement for refusing to submit to a chemical test, a prior DWI offense/admin. per se violation is considered the same as a prior refusal. 21 §2742(b)
[2]For sentencing purposes, all prior drunk driving offenses are considered. 21 §4177B(e)(2)

Special Note: The following licensing sanctions apply to persons <21 yrs old, who refuse to submit to chemical test, after they have been arrested for a violation of 21 §4177L(a) which prohibits these persons form driving while either consuming or after consuming alcoholic beverages. I. Refusal-**Rev-2 mos** (appears mand) II. Refusal where the person has had a one previous violation of 21 §4177L(a)-**Rev-6 mos** (appears mand) III. Refusal where the person has had two previous violations of 21 §4177L(a)-**Rev-12 mos** (appears mand) 21 §2742(b)(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment: (continued)	Vehicle Assault-1st degree-Cl F felony-A DWI related serious injury where there has been negligent driving -Not more than **3 yrs** 11 §§629 & 4205(b)(6) Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-**None**
Mandatory Minimum Term:	1st off-**None** Imprisonment sanctions may be suspended. 21 §4177(e) 2nd off (w/n 5 yrs)-**60 dys**; 3rd off (w/n 5 yrs)-**3 con mos**[1]; 4th and sub off-**6 con mos**[1] 21 §4177(d) **Special Note:** "House arrest" may be possible in lieu of incarceration despite the fact that, under 21 §4177(d), a person convicted of a second or subsequent DWI off may not receive a suspended sentence. See the Miscellaneous Sanctions on p. 3-84. Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-**N/A**
Fine:	
Amount ($ Range):	1st Off-**$230 to $1,150**[2]; 2nd off (w/n 5 yrs)-**$575 to $2,300**[2]; 3rd off (w/n 5 yrs)-**$1,000 to $3,000**[2]; 4th and sub off-**$2,000 to $6,000**[2] 21 §4177(d); (1) Veh Assault-2nd degree-Cl B misd-Not more than **$1,500** 11 §4206 (2) Veh Assault-1st degree-Cl F felony-The court may impose a fine as it deems appropriate 11 §4205(k) Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-**None**[3]
Mandatory Minimum Fine ($):	1st Off-**$230**[2]; 2nd off (w/n 5 yrs)-**$575**[2]; 3rd off (w/n 5 yrs)-**$1,000**[2]; 4th and sub off-**$2,000**[2] Except in the case of a subsequent offender who is admitted into the "ignition interlock" program under 21 §4177F(a), these fines appear to be mandatory via 21 §4177(d) which provides that a DWI offender's sentence is not to be suspended. Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-**N/A**
Other Penalties:	
Community Service:	**Yes**[2&4] Discretionary 11 §4333A
Restitution (eg Victim's Fund)	**Yes** (1) The court may order the defendant to pay compensation to a victim. 11 §4204(c)(9) (2) Also, a victim of a DWI offense is eligible for compensation from the State's Violent Crime Compensation Board. 11 §9002(3)

[1]This mand imprisonment sanction appears to be consecutive as early release, furlough and suspended sentence are prohibited.
[2]**Child Endangerment.** A person, who commits a drunk driving offense while transporting an individual < 17 yrs old, is subject to the following sanctions which are in addition to any other sanctions that are authorized by law this offense. 1st off-An additional fine of $230 to $1,150 and 40 hrs of community service benefiting children; subsequent off-An additional fine of $575 to $2,300 and 80 hrs of community service benefiting children. 21 §4177(d)(5) These sanctions do not apply to 1st offenders who are participating in the probation for judgement program. 21 §4177B
[3]If the offender does not have a license, 1st off-$200; sub. off-$400 to $1,000 21 §4177L(a)
[4]The total number of community service hrs that may be imposed cannot exceed the maximum term of incarceration for the offense.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	**Assessment.** An additional amount equal to 15% of any fine (whether the fine is suspended or not) is assessed against the defendant. The assessment is deposited in the Victim compensation fund. 11 §9012 **Drunk Driving Offense While in Violation of Ignition Interlock Order.** A person, who has been convicted of a drunk driving offense while driving in violation of an order requiring them to only operate motor vehicles that are equipped with ignition interlock devices, is subject to additional imprisonment term of **60 dys** and an additional fine of **$2,000**. 21 §4177(e)
Administrative Licensing Actions: Pre-DWI Conviction Licensing Action: Administrative Per Se Law:	**Yes** Based on probable cause of DWI (alcohol or drugs)[1] 1st off-**Rev -3 mos** (mand); 2nd off[1]-**Rev-1 yr** (mand); 3rd or subsequent offs-**Rev -18 mos** (mand)[2] 21 §§2742(c)(1) & 2743(b) Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor[3]-1st off-**Rev-2 mos** (appears mand); sub. off-**Rev-6 to 12 mos** (6 mos appears mand) 21 §2742(c)(2)
Other:	A license may be susp for not more than 1 yr if a person has "committed" an off requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing. 21 §§2733(a)(1) & (e) **Comment:** Such action could occur prior to a conviction.
Post DWI Conviction Licensing Action: Type of Licensing Action (Susp/Rev):	1st off-**Rev**; 2nd off (w/n 5 yrs)-**Rev**; 3rd or subsequent off (w/n 5 yrs)-**Rev** 21 §4177A Veh Assault (1st & 2nd degrees)-**Rev** 21 §2732(a)(2) See the Special Note below. Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-**Rev** 21 §4177L(a)
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**1 yr**; 2nd off (w/n 5 yrs)-**1 yr**; 3rd or sub. off (w/n 5 yrs)-**18 mos** Veh Assault (2nd degree)-**1 yr**; Veh Assault (1st degree)-**2 yrs** Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-1st off-**2 mos**; sub. off-**6 to 12 mos**

[1]Under 21 §2742(f)(2) with reference only to an admin. per se violation, an alcohol concentration ≥0.10 (See Footnote No. 2 on p. 3-79.) or a "positive indication of drugs" is conclusive evidence of a DWI (21 §4177) offense.
[2]For the purpose of license sanction enhancement, prior DWI offense/implied consent test refusal is considered the same as a prior admin. per se violation. 21 §2742(c)
[3]For persons <21 yrs old, an alcohol concentration ≥0.02 is "conclusive evidence" of vehicle operation while or after consuming alcoholic liquor. 21 §2742(f)(3) For alcohol concentration standards, see Footnote No. 2 on p. 3-79.

Special Note: For persons under 18 years old, license suspension/revocation until they are 21 (6 mos mand). After the mandatory period, a restricted license may be issued provided (1) there is a "critical need" for such a license and (2) the minor is attending an alcohol program. 1 §302(2) & (12) and 10 §§927(a)(6) & 1009(f) Also, under 21 §2707(b)(10), the licensing agency is not supposed to issue a license for either 2 yrs or until the person is 18 whichever is longer to anyone under 21 who has been convicted of either a DWI or any drug offense; the minimum period of 2 yrs appears to be mand.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of Withdrawal:	1st off-**90 dys**[1] A conditional license may be issued after the first 90 dys of the rev period 21 §§4177B, 4177C & 4177E 2nd and subsequent offs-**6 mos**[1] A person may be permitted to apply for a driver's license after 6 mos provided they have satisfactorily completed an alcohol or drug instruction or rehabilitation program. 21 §§4177C(b) & 4177D Veh Assault (2nd degree)-**1 yr**; Veh Assault (1st degree)-**2 yrs** Persons Under 21 Years Old-Operation of Vehicle While or After the Consuming Alcoholic Liquor-1st off-**2 mos**; sub. off-**6 mos** These actions appear to be mandatory.
Other:	
Rehabilitation:	
Alcohol Education:	**Yes**[2]
Alcohol Treatment:	**Yes**[2]
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	Note: Impoundment of a vehicle or surrender of license plates/registration (1st off-90 dys; sub off-1 yr) is authorized if the vehicle operator was operating his/her vehicle while they were under license susp or rev for a DWI off., implied consent refusal or other situations which require mandatory license revocation. 21 §2756(c)(1)

[1]**Ignition Interlock.** Court Order. Under 21 §4177(e), the court, in **addition** to any other penalty, may order the defendant only to operate vehicles equipped with an "ignition interlock" device. This requirement must remain in effect for not less than 1 yr. Voluntary Participation in Ignition Interlock Program. First offenders, who have refused to submit to a chemical test, and 2nd or subsequent offenders are eligible for early conditional licenses via the licensing agency if they agree to install and use ignition interlock devices on the vehicles they operate. (1) If the original revocation was for 12 months, a person must agree to participate in the program for 14 months whereupon a conditional license is available after 3 months. (2) If the original revocation was for 18 months, a person must agree to participate in the program for 20 months whereupon a conditional license is available after 6 months. And, (3) if the original revocation was for 24 months, a person must agree to participate in the program for 26 months whereupon a conditional license is available after 12 months. Offenders must agree to complete an alcohol education or rehabilitation program following revocation. Note: Certain offenders are not eligible for this voluntary program. E.g., persons who have been convicted for drunk driving offenses related to death or serious injury or who are under license suspension or revocation. 21 §4177F

[2]I. 1st offenders are required to complete either a DWI education or rehabilitation program. 21 §4177(d)(1) II. 1st offenders, who elect to participate in probation before judgement program, are placed on probation and required to complete either a DWI education or rehabilitation program. However, offenders (1) whose blood alcohol concentration was ≥0.20, (2) who were driving on a suspended or revoked license, (3) who were involved in an injury causing accident or (4) who had 3 or more moving violations (w/n 2 yrs) are not eligible for this program. 21 §4177B(a) III. **Historical Note:** The law, concerning the participation of subsequent offenders in either a DWI education or treatment program, may have been repealed. See §6 of Public Act 26 of 1995 which amended 21 §4177(f). Prior to this 1995 enactment, the law provided that these offenders could be "[o]rdered to complete a program of education or rehabilitation which may include in-patient treatment followed by such other programs as established by training facility" for a time not to exceed 15 mos and pay a fee not to exceed the maximum fine.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions Not Included Elsewhere:	It appears that **"house arrest"** may be used as an alternative to imprisonment. 11 §§4332, 4347(j), 4391 et seq. See especially 11 §4392(c).

Other Criminal Actions Related To DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes**[1] 1st degree (death caused by criminally negligent driving while DWI) **Cl E felony** 11 §630A; 2nd degree (death caused by (1) criminally negligent driving or (2) negligent driving while DWI) **Cl F felony** 11 §630
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	1st degree-Not more than **5 yrs**; 2nd degree-Not more than **3 yrs** 11 §4205
Mandatory Minimum Term:	1st degree-**2 yrs**; 2nd degree-**1 yr** 11 §§630 & 630A
Fine ($ Range):	1st & 2nd degrees-As deemed appropriate by the court 11 §4205(k)
Mandatory Minimum Fine:	**None**

[1]A defendant may be required to pay restitution to a victim of a vehicle homicide offense. 11 §4202(c)(9)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of alcohol, a controlled substance or any drug or (3) refuse to submit to a chemical test for an alcohol concentration. A person is not eligible for an occupational CDL if they have been "disqualified". Note: The disqualification provision, 21 §2612(a)(5), only applies to a refusal to submit to a test to determine an alcohol concentration; however, the CMV implied consent provision, 21 §2614, applies to tests for either an alcohol concentration or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 dys mand). In addition, a CMV operator who has any measurable amount of alcohol (defined as having BAC/BrAC ≥0.02 but <0.04) in their system must be placed "out-of-service" for 24 hours. A CMV operator is also subject to the following criminal sanctions for violating driving while in violation of either the "disqualification" or "any measurable amount" provisions of the CMV/CDL statute: 1st off: Fine-$200 to $2,500; subsequent offense: Fine-$500 to $5,000, jail-not more than 90 days. 21 §§2603(2), (6), (7), (9), (18) & (21), 2607, 2612(a), (b) & (c), 2613, 2614(a) & (b) and 2622 Important. Separate provisions of law also make it an offense to operate a CMV with a BAC/BrAC ≥0.04 (Standard: Grams of arc. per 100 milliliters of blood or grams of arc. per 210 liters of breath.) or while impaired by any drug or controlled substance. A person, who violates this law, is subject to the "disqualifications" noted above and the following criminal sanctions. For a 1st offense they are subject to a fine of $25 to $115. For a subsequent offense, they are subject to an imprisonment term of 10 to 30 dys and/or a fine of $57.50 to $230. However, a 2nd offense must occur w/n 12 mos of a 1st. Note: Prosecution under this law does not preclude prosecution under other provisions of law. 21 §§4177J & 4205(a)

Other Criminal Actions Related To DWI: (continued)

Administrative Licensing Action:	
Licensing Authorized and Type of Action:	1st degree-**Rev**; 2nd degree-**Rev** 21 §2732
Length of Term of Licensing Withdrawal:	1st degree-**4 yrs**; 2nd degree-**3 yrs**
Mandatory Action--Minimum Length of License Withdrawal:	1st degree-**4 yrs**; 2nd degree-**3 yrs**
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd** (Unclassified) 1st off-**30 dys to 6 mos**; subsequent off (w/n 3 yrs)-**60 dys to 1 yr** 11 §§233(c) & 4202(b) and 21 §2756
Mandatory Minimum Term of Imprisonment:	1st off-**None**[1]; subsequent off (w/n 3 yrs)-**60 dys** 21 §2756
Fine ($ Range):	1st off-**$500 to $1,000**; subsequent off (w/n 3 yrs)-**$1,000 to $4,000** 21 §2756
Mandatory Minimum Fine:	1st off-**$500**[1&2]; subsequent off (w/n 3 yrs)-**$1,000** 21 §2756
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**None**[3]
Length of Term of License Withdrawal Action:	
Mandatory Term of License Withdrawal Action:	

[1]If the offense involved operating a motor vehicle while revoked where the revocation was based on a drunk driving offense related to either a death or an injury, there is a mandatory **30 dy** period of imprisonment and a mandatory fine of **$2,000**.
[2]If the original revocation was based on a drunk driving offense, the minimum mandatory fine is $600. 21 §2756(a)
[3]See Vehicle Impoundment/Consication on p. 3-83.

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: I. It is an unclassified misd to operate a CMV while either disqualified or under a CDL out-of-service order. For a 1st offense, a person is subject to a fine of from $200 to $2,500; for a subsequent offense, a person is subject to an imprisonment term of not more than 90 dys and/or a fine of from $500 to $5,000. 11 §§233(c) & 4202(b) and 21 §§2607(b) & 2622 II. Under separate provisions of law, the following sanctions may be imposed for a violation of an "out-of-service" order. Fine: A fine of $1,000 to $2,500. 21 §2612(h)(4) Disqualification: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 to 5 yrs (1 yr mand); and, 3rd or subsequent violation (w/n 10 yrs)-3 to 5 yrs (3 yrs mand). If the driver was either transporting hazardous materials or driving a vehicle designed to transport > 15 persons, the following disqualification periods apply: 1st violation-180 dys (mand) to 2 yrs; 2nd violation (w/n 10 yrs)-3 to 5 yrs (3 yrs mand); and, 3rd or subsequent violation (w/n 10 yrs)-3 to 5 yrs (3 yrs mand). 21 §2612(h)(1), (2) & (3)

Other Criminal Actions Related To DWI: (continued)

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** 21 §2801 et seq. See Footnote No. 3.
Grounds for Being Declared an Habitual Offender:	3 serious or 10 minor moving violations within a 5-yr period
Term of License Rev While Under Habitual Offender Status:	**Rev for 5 yrs** if based on serious offs or for **3 yrs** if based on minor moving violations
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Misd** (Unclassified) 11 §§233(c) & 4202(b)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	1st off-**90 dys to 30 mos**[4]; subsequent off-**180 dys to 5 yrs**[4] 21 §2810
Mandatory Minimum Term of Imprisonment:	1st off-**90 dys**[4]; subsequent off-**180 dys**[4] 21 §2810
Fine ($ Range):	1st off-not more than **$1,150**; subsequent off-not more than **$2,300** 21 §2810
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	

[3]Under 21 §2814, a person, who is convicted of a traffic offense that would make them an habitual offender, is subject to the following additional sanctions: Jail-30 dys to 12 mos; fine-$115 to $1,150. No execution is taken to impose these additional sanctions until the person is finally adjudged an habitual offender.

[4]Under 21 §2810, the court cannot suspended an imprisonment term. **Comment:** This in effect makes the minimum period of incarceration mandatory.

Other State Laws Related to Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[1] (Year Eff: 1983) 4 §904(a) & (b)
Minimum Age (Years) Possession:	**21** Does not apply to alcohol use in religious services or in the home. 4 §904(f)
Minimum Age (Years) Consumption:	**21** Does not apply to alcohol use in religious services or in the home. 4 §904(f)
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** Note: For cases denying liability, see *Wright v. Moffitt,* 437 A.2d 554 (Del. 1981)[2], *Oakes v. Megaw,* 565 A.2d 914 (Del. 1989), *Samson v. Smith,* 560 A.2d 1024 (Del. 1989), and *Acker v. Cantinas, Inc.,* 586 A.2d 1178 (Del. 1991).
Dram Shop Actions-Social Hosts:	**No** (No cases)[3]
Other:	A licensee is not liable for the injuries sustained by an intoxicated patron. *Wright v. Moffitt,* 437 A.2d 554 (Del. 1981), & *McCall v. Villa Pizza, Inc.,* 636 A.2d 912 (Del. 1994)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** (Unclassified) 4 §706 and 11 §§233(c) & 4202(b)
Term of Imprisonment:	**No**[1]
Fine ($ Range):	Not more than **$100**[2] 4 §903(4)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp** 4 §561(b)(1)
Length of Term of License Withdrawal:	Not specified by statute

[1]It not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to make a "false statement" about their age in order to obtain alcoholic beverages. 4 §904(b)

[2]The *Wright* case concerned a patron who brought a cause of action against a licensee for injuries they sustained as a result of becoming intoxicated at the licensee's establishment. At the conclusion of its decision, the court made a general statement that, in effect, held that a licensee is not liable for the injuries caused by an intoxicated patron to a third party (437 A.2d at 559).

[3]**Special Note:** A "business invitee" (employee) on the premises of a social host (employer) may have a cause of action against such social host for injuries sustained as a result of actions by an intoxicated guest. *DiOssi v. Maroney,* 548 A.2d 1361 (Del. 1988)

Other State Laws Related to Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** (Unclassified) 4 §§708(a)(1) & 904(a) and 11 §§233(c) & 4202(b)
Term of Imprisonment:	**No**[1]
Fine ($ Range):	Not more than **$250**[2] 4 §904(a)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp** 4 §561(b)(1)
Length of Term License Withdrawal:	Not specified by statute
Anti-Happy Hour Laws/Regulations:	**No**[3]
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Applies only to drivers[4] 21 §4177J

[1]A person may be imprisoned for 30 dys for failure to pay the fine. 4 §§903 & 904(a)
[2]Under 4 §902, also authorized is a fine of $500 to $1,000; failure to pay this fine will subject a violator to 3 to 6 months in jail.
[3]"No more than 1 alcoholic beverage may be sold to a person less than fifteen minutes prior to closing...." 4 §727
[4]Applies to persons who consume an alcoholic beverage while "operating a motor vehicle in the presence of, or in the view of, a police officer."

JURISDICTION:	**DISTRICT OF COLUMBIA**
General References:	D.C. Code and D.C. Municipal Regulations (DCMR)

Basis for a DWI Charge:

Standard DWI Offense:	I. Under the influence of intoxicating liquor[1] §40-716(b)(1) II. Impaired by the consumption of intoxicating liquor[1] §40-716(b)(2)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[2&3] §40-716(b)(1) See **Pending Legislation** below. For Persons Under 21 Years Old-Operating a Vehicle with **Any** Measurable Amount of Alcohol in Either the Blood, Breath or Urine[4] §40-716(b)(1)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Driving under the influence of (1) **Any Drug** or (2) a Combination of Any Drug and Alcohol[1] §40-716(b)(1)
Other:	A BAC ≥**0.05**[3], a UrAC of ≥0.06 percent by wgt. or a BrAC of ≥0.24 micrograms of alcohol in 1 milliliter of breath constitutes *prima facie* evidence of either driving while under the influence or driving while impaired. §40-717.1(2) See Footnote No. 1 on p. 3-91 which gives *prima facie* levels under the D.C. Municipal Regulations. For Commercial Motor Vehicle Operators, see p. 3-91.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes**[5] §40-716(b-1)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[5] §40-502
Implied Consent Law Applies to Drugs (Yes/No):	**Yes**[5] §40-502(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §40-505(c)
Other Information:	As person is required to submit a chemical test, if they have been involved in an accident (regardless of whether there has been an injury) and they have been arrested for any DWI offense. §40-502(b) & *Marshall v. District of Columbia,* 498 A.2d 190 (D.C.App. 1985)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §40-502

[1]The driving while impaired offense applies only to the use of alcohol. The driving while under the influence offense applies to the use of either alcohol or drugs.
[2]This jurisdiction's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a BrAC of 0.48 micrograms or more of alcohol in 1 milliliter of breath or (2) a UrAC of 0.13 or more (percent by weight).
[3]The BAC standard is percent by weight of alcohol in the blood. §§40-716(b)(1) & 40-717.1
[4]The sanctions (criminal and administrative) against persons under 21 years old, who are convicted of operating a motor vehicle with any amount of alcohol in their system, are the same as for the offenses of illegal per se and driving while under the influence.
[5]The PBT and Implied Consent Laws also apply to persons under 21 years old who operate a vehicle with any measurable amount of alcohol in their blood, breath or urine.

Pending Legislation. At the time of closing for press (November 1998), the Council of District of Columbia was actively considering legislation that would change the illegal per se levels as follows: BAC to ≥**0.08** (percent by weight of alcohol in the blood); BrAC to ≥0.38 (micrograms of alcohol in 1 milliliter of breath); and, UrAC to ≥0.10 (percent by weight). Bill No. 12-581

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law: (continued)

Urine:	**Yes** §40-502
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**Susp 12 mos** §40-505(a) (Mandatory No occupational hardship license shall be issued. 18 DCMR 310.7(a))
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	I. Illegal per se/Under the Influence (See Footnote No. 4 on p. 3-89.): 1st Off-Not more than **90 dys**; 2nd Off[1]-(w/n 15 yrs)-Not more than **1 yr**; 3rd and subsequent offs[2] (w/n 15 yrs)-Not more than **1 yr** II. Impaired: 1st Off-Not more than **30 dys**; 2nd Off[3] (w/n 15 yrs)-Not more than **90 dys**; 3rd or sub. off[4] (w/n 15 yrs)-Not more than **1 yr** §40-716(b)(1) & (2)
Mandatory Minimum Term:	**None**
Fine:	
Amount ($ Range):	I. Illegal per se/Under the Influence (See Footnote No. 4 on p. 3-89.): 1st Off-Not more than **$300**; 2nd Off[1] (w/n 15 yrs)-**$1000 to $5,000**; 3rd and subsequent offs[2] (w/n 15 yrs)-**$2,000 to $10,000** II. Impaired: 1st Off-**$200 to $300**; 2nd Off[3] (w/n 15 yrs)-**$300 to $500**; 3rd or sub. off[4] (w/n 15 yrs)-**$1,000 to $5,000**

[1]or a 1st offense where there has been a previous impaired offense (w/n 15 yrs).
[2]or a 2nd offense where there has been a previous impaired offense (w/n 15 yrs).
[3]or a 1st offense where there has been previous illegal per se/under the influence offense (w/n 15 yrs).
[4]or a 2nd offense where there has been previous illegal per se/under the influence offense (w/n 15 yrs).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Fine ($):	**None**
Other Penalties:	
Community Service:	**None**
Restitution (eg Victim's Fund)	**Yes** I. A Victim's Compensation Fund §3-421 et seq. Awards are limited to a maximum amount of $25,000. §3-427(b) II. A defendant may be required to pay restitution to a victim. §16-711
Other:	**None**
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Under the Influence of Intoxicating Liquor or Drugs**[1] 1st violation-**Susp 2 to 90 dys** or **Rev for 6 mos**; sub. violation-**Susp** from **2 to 90 dys** or **rev** where the time period is discretionary but must be for definitive period of time.[2] Note: At the discretion of the licensing agency, the suspension may be from 2 to 90 dys "based upon the seriousness of the case." 18 DCMR §§302.5, 306.1 & 306.4
Other:	**None**
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	I. Driving under the influence/illegal per se[2]: **Rev** for all offs §40-716(d)(1) & 18 DCMR §301.1 II. Driving while impaired: Either **susp or rev** at the discretion of D.C. officials §40-302(a)

[1]A blood alcohol concentration ≥0.05 percent by weight of alcohol in the blood or an equivalent quantity of alcohol in 2,000 cubic centimeters of breath is considered *prima facie* evidence of driving while under the influence. 18 DCMR §1034.3 See "Other" under Basis for a DWI Charge on p. 3-89 which gives *prima facie* levels under the D.C. Code.
[2]These licensing actions are not mandatory. A person is eligible for either limited or occupational driving privileges. 18 DCMR §§309.1 et seq. & 310.1 et seq.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" (suspended) from operating a CMV for 1 yr (mand) if they are convicted of driving a CMV (1) with an alcohol concentration ≥0.04 (Note: Alcohol concentration standards for CMV operations are not specifically provided for in the D.C. Code. However, the code does make reference to the Federal CMV law on this subject. Federal regulations promulgated pursuant to this law provided that the standards for alcohol concentration are grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. 49 CFR 383.5) or (2) while under the influence of alcohol or a controlled substance. For either (1) a second violation or (2) a combination of two violations of any of the above listed items, the "disqualification" (suspension) is from 10 yrs (mand) to life. For either (1) a third violation or (2) a combination of three violations of any of the above listed items, the "disqualification" (suspension) is for life (mand). A person is "disqualified" for not less than 3 yrs (mand) if they are using a CMV in the commission of a felony if such a violation occurred while transporting hazardous materials. §§40-1801(3) & (4) and 40-1806

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.):	I. Driving under the influence/illegal per se[1]: 1st off-**6 mos**; 2nd off-**1 yr**; 3rd and sub. offs-**2 yrs** §§40-302(a) & (b), 40-716(d) and 18 DCMR §§301.1 & 306.5 II. Driving while impaired: 1st off-**Susp** from **2 to 90 dys**[2] or **Rev for 6 mos**; sub.off-**Susp** from **2 to 90 dys**[2] or **Rev** where the time period is discretionary but must be for definitive period of time §40-302(a) and 18 DCMR §§306.1 & 306.4
Mandatory Minimum Term of Withdrawal:	I. Driving under the influence/illegal per se (See Footnote No. 1 below.): 1st off-**6 mos**; 2nd off-**1 yr**; 3rd and sub. offs-**2 yrs** Note: No occupational hardship licenses shall be issued. 18 DCMR §310.7(a) II. Driving while impaired: **None** Note: Either a limited license (19 DCMR §309.1 et seq.) or a limited occupational hardship license (18 DCMR §310.1 et seq.) may be issued.
Other:	
Rehabilitation:	
Alcohol Education:	
Alcohol Treatment:	
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**Limited Impoundment.** Under §40-716(c-1), a vehicle driven by a person arrested for any drunk driving offense may be impounded for a limited time (24 hrs). However, a licensed registered owner of the vehicle, who was with the offender at the time of their arrest, may take immediate possession of the vehicle. Also, after authorization by the arrested person, the vehicle may be released to an individual who is a licensed driver. **Limited Registration Suspension.** The registrations of all vehicles owned by a person, who has been convicted of any drunk driving offense, must be suspended until the offender gives and maintains proof of financial responsibility. §§40-437 & 40-438
Miscellaneous Sanctions Not Included Elsewhere:	**None**

[1]See Footnote No. 4 on p. 3-89. **Special Note:** Sec. 40-716(d) authorizes lic rev for driving while under the influence/illegal per se offs. However, this section does not authorize such action against persons under 21 yrs old who are convicted of operating a motor vehicle with any measurable amount of alc in their body. Nevertheless, via legislation, 18 DCMR §301.1 was amended to authorize such action against these young persons. §7 D.C. Act 10-214 of 1994

[2]At the discretion of the licensing agency, the suspension may be from 2 to 90 dys "based upon the seriousness of the case." 18 DCMR §306.1

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
Jurisdiction Has Such a Law:	**Yes** Felony Negligent Homicide §40-713
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **5 yrs**
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$5,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §40-716(d)(2) and 18 DCMR §§301.1(b) & 306.5
Length of Term of Licensing Withdrawal:	1st off - **6 mos**; 2nd off - **1 yr**; 3rd and subsequent offs - **2 yrs**
Mandatory Action--Minimum Length of License Withdrawal:	1st off - **6 mos**; 2nd off - **1 yr**; 3rd ans subsequent offs - **2 yrs**
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote No. 1.
Sanction:	
Criminal:	
Imprisonment (Term):	Not more than **1 yr** §40-302(e)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$5,000** §40-302(e)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Rev/Susp**
Length of Term of License Withdrawal Action:	Extend the period of susp or rev for an additional period of time which is equal to the length of the original susp or rev period. §40-302 and 18 DCMR §§305.1 & 305.5
Mandatory Term of License Withdrawal Action:	Licensing action is mandatory; no occupational license can be granted. 18 DCMR §310.7(c)

[1]Neither the CMV law nor the general code provisions concerned with driving while suspended or revoked provide specific sanctions for operating a CMV during a CDL disqualification.

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

Jurisdiction Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1986) §§25-121 & 25-130(a)
Minimum Age (Years) Possession:	**21** §25-130(a)
Minimum Age (Years) Consumption:	**21** §25-130(a)

Other Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the Jurisdication Citation):	**Yes** *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, 534 A.2d 1268 (D.C.App. 1987), & *Marusa v. D.C.*, 484 F.2d 828 (D.C.Cir. 1973)
Dram Shop Actions-Social Hosts:	**No** (No cases)
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Unspecified but would probably be considered to be a misd.
Term of Imprisonment:	Not more than **1 yr**
Fine ($ Range):	Not more than **$1,000** §§25-121 & 25-132
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev**[1] §25-118
Length of Term of License Withdrawal:	For rev, no new license shall be issued for **1 yr**.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	Unspecified but would probably be considered to be a misd.[2] §§25-121 & 25-132
Term of Imprisonment:	Not more than **1 yr**
Fine ($ Range):	Not more than **$1,000**
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev**[1] §§25-118 & 25-121
Length of Term License Withdrawal:	For rev, no new license shall be issued for **1 yr**.

[1]Under §25-118(a), "an offer in compromise" may be made by the licensing authority in lieu of a suspension.
[2]Anyone who offers, gives, provides or otherwise makes available alcoholic beverages to a person under 21 years old is subject not only to the criminal penalties noted but also to the following administrative sanctions. They are subject (1) to a fine of from $100 to $300 and (2) to suspension of their driving privileges (1st off-90 con. dys; 2nd off-180 dys; 3rd and sub. off-1 yr). §25-130(d) & (e)

Other Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §25-128(a) & 18 DCMR §2219a.1 et seq.
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §25-128(a)

STATE:	**FLORIDA**
General Reference:	Florida Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic beverages[1] §316.193(1)(a)
Illegal Per Se Law (BAC/BrAC):	≥**0.08**[1,2&3] §§316.193(1)(b) & (c) and 316.1932(1)(b)1
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of a **Controlled Substance or Chemical Substance** listed respectively in chapter 893 and §877.111 §§316.193(1)(a) & 316.1931
Other	1) A BAC/BrAC ≥**0.08**[3] is *prima facie* evidence of driving under the influence §316.1934(2)(c) See the Special Note below. 2) For Commercial Motor Vehicle Operators, see p. 3-101. 3) A person arrested for a DWI offense cannot be released from custody until either (1) they are no longer under the influence of alcohol or other chemical substance, (2) their BAC/BrAC is <0.05 or (3) eight (8) hrs have elapsed from the time of their arrest. §316.193(9)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §§316.1932(4)(a) & 322.2616(17)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§316.1932(1)(a) & 322.2616(1)(b)[4] Under §316.1932(1)(c), an arrest is not a prerequisite to the taking of a blood sample if the driver is taken to a medical facility for treatment as a result of an accident. *Kenson v. State,* 577 So.2d 694 (Fla.App. 3 Dist. 1991)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §316.1932(1)(a) Limited to the testing of urine.
Refusal to Submit to Chemcial Test Admitted into Evidence:	**Yes**[5] (Criminal Cases) §§316.1932(1)(a) & 316.1932(1)(b)
Other Information:	A driver may be compelled (forced) to provide a blood sample for testing only if they have been involved in an accident resulting in either death or serious bodily injury. §316.1933(1), *State v. Slaney,* 653 So.2d 422 (Fla.App. 3 Dist. 1995), *Robertson v. State,* 604 So.2d 783 (Fla. 1992), *Carbone v. State,* 564 So.2d 1253 (Fla.App. 4 Dist. 1990), & *State v. Perez,* 531 So.2d 961 (Fla. 1988).

[1]The offense of "driving under the influence" includes (1) driving under the influence of alcoholic beverages or (2) driving with a blood or breath level of 0.08 or more. §316.193(1)(a) & (b) and *State v. Rolle,* 560 So.2d 1154 (Fla. 1990)

[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

[3]Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liter of breath. §§316.193(1)(b) & (c), 316.1932(1)(b)1 and 316.1934(2)(c)

[4]Under §322.2616(1)(b), a person under 21 yrs old may be lawfully detained and requested to submit to a chemical test if a there is probable cause to believe that they were driving while under the influence of alcohol or with any alcohol level.

[5]A refusal to submit to field sobriety testing is admissible into evidence at a drunk driving offense trial. §316.1932(4)(b), *State v. Taylor,* 648 So.2d 701 (Fla. 1995), *State v. Cook,* 659 So.2d 473 (Fla.App. 2 Dist. 1995), & *State v. Burns,* 661 So.2d 842 (Fla.App. 5 Dist. 1995)

Special Note: A jury instruction, that was based in part on a verbatim reading of §316.1934(2)(c), was held to be unconstitutional in that it created a mandatory "irrebuttable" presumption that shifted the burden of proof of the DWI offense to the defendant. *Wilhelm v. State,* 568 So.2d 1 (Fla. 1990). Notwithstanding this case, the statutory language was held constitutional in a prior decision. *State v. Rolle,* 560 So.2d 1154 (Fla. 1990). Note: A Federal court has held, in similar circumstances, that there was no constitutional infirmity. However, the Federal court did express its concern that a jury could be confused with the term *"prima facie"*. Despite this concern, the court felt that no unconstitutional mandatory presumption had been created when this instruction was viewed in conjunction with the other jury instructions that were given. *Santiago Sanchez Defuentes v. Dugger,* 923 F.2d 801 (11th Cir. 1991)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Impled Consent Law:

Blood:	**Yes Limited** A blood test, for the purposes of implied consent, may be may be taken only if the driver appears for treatment at a medical facility and the administration of a breath/urine test is impractical or impossible. §316.1932(1)(b)
Urine:	**Yes Limited** Under §316.1932(1)(a), there is an implied consent to submit to a urine test for the purpose of detecting the presence of controlled substances.
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**Yes** Applies to (1) DWI, (2) manslaughter resulting from the operation of a motor vehicle and (3) vehicle homicide offenses. §316.656(1)
Anti-Plea Bargaining Statute (Yes/No):	**Yes** Applies to (1) DWI where the alcohol concentration is 0.20 or more, (2) to DWI where there has been property damage, (3) to manslaughter related to the operation of a motor vehicle and (2) to vehicle homicide. §316.656(2)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** A person convicted of a DWI offense may be referred to substance abuse evaluation. §316.193(5)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal-Susp for **1 yr** (90 dys mand A hardship license is available after this mand period.); Subsequent refusals-Susp for **18 mos** (Mandatory)[1] §§322.2615(8)(a) & (10) and 322.271(2)(a) Persons Under 21 Years Old. 1st refusal-Susp for **1 yr** (30 dys mand)[2]; Subsequent refusals-Susp for **18 mos** (30 dys mand)[2] §322.2616(2), (9) & (11)

[1]**Comment:** The "actual" suspension period appears to be only 17 mos. The law provides that a person be issued a 30 dy temporary license at the time of arrest. However, since the law also provides that the suspension "commences" at the time of arrest, the person is only denied driving privileges for 17 mos. §322.2615(b)(1.a), (2) & (4) Unlike the mandatory suspension associated with a 1st refusal, the law does not provided that the mandatory suspension period start after the expiration of the 30 dy temporary license.
[2]The law provides that the suspension "commences" at the time notice is given. This is usually after the person has been stopped by a law enforcement officer. However, the 30 dy mand period begins after the temporary permit, issued at the time of the stop, expires. A hardship license is available after this mand period. §322.2616(9) & (11)

Sanctions for Refusal to Submit to a Chemical Test:

Other:	Under §322.291, an implied consent law violator is required to complete a driver training course.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 1 and Double Jeopardy below.
Imprisonment:	1st Off (Misd)-**Not more than 6 mos**; 2nd Off (Misd)-**Not more than 9 mos**; 3rd Off (Misd)-**Not more than 12 mos**; 4th or sub. Off (3rd degree felony)-**Not more than 5 yrs**[1] §§316.193 & 775.08(2) See Footnote No. 2.
Mandatory Minimum Term:	2nd Off-**10 dys (w/48 con hrs)**[2] if 2nd off was w/n 5 yrs of a previous DWI conviction §316.193(6); 3rd or sub. Off-**30 dys (w/48 con hrs)**[2] if 3rd or sub. off was w/n 10 yrs of a previous DWI off §316.193(6)
Fine:	
Amount ($ Range):	1st Off-**$250 to $500**; 2nd Off-**$500 to $1,000**; 3rd Off-**$1,000 to $2,500**; 4th or sub. Off (3rd degree felony)-**$1,000 to $5,000**
Mandatory Minimum Fine ($):	**None**
Other Penalties:	
Community Service:	1st off-**50 hrs** or if the court thinks it in the best interests of the State, a **$10 fine** for each hour of community work otherwise required (required notwithstanding other sanctions) Note: This sanction for 1st offerders is part of mandatory probation which is not to exceed **1 yr.** §316.193(6)(a) Also, under §775.091, the court may order a defendant (a 1st or sub. offender) to perform specified public service.
Restitution (eg Victim's Fund)	(1) The court may order a defendant to pay restitution to a victim. §775.089. (2) In addition, the State has a victim's compenstion fund. A victim of DWI offense is eligible to receive payments from this fund. §960.01 et seq.
Other:	**Mandatory Probation.** 1st offenders must be placed on probation for 1 yr. §316.193(6)(a) **Crimes Compensation Trust Fund.** The following surcharges, costs and fines are paid into the Crimes Compensation Trust Fund: (1) A **surcharge** which is **5%** of the fine; (2) a special cost of **$50**; and, (3)

[1]For under the influence offenses involving: (1) Property damage or personal injury-Misd of the 1st degree-Not more than **1 yr** in jail, a fine of not more than **$1,000**; (2) serious bodily injury-3rd degree felony-Not more than **5 yrs** in prison, a fine of not more than **$5,000**; or, (3) a BAC/BrAC ≥0.20 or a passenger under 18 years old (**child endangerment**): 1st Off-Not more than **9 mos** in jail, a fine of **$500 to $1,000**; 2nd Off-Not more than **12 mos** in jail, a fine of **$1,000 to $2,000**; 3rd Off-Not more than **12 mos** in jail, a fine of **$2,000 to $5,000** Note: The minimum mandatory sanctions for "regular" DWI offense convictions also apply to these offenses. §§316.193(3) & (4), 775.082, 775.083 and 775.084

[2]The court at its discretion may require a defendant to serve all or any part of a sentence of imprisonment for a DWI offense in either an alcohol or a drug residential treatment program. §316.193(6)(e)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Freeman v. State,* 611 So.2d 1260 (Fla.App. 2 Dist. 1992) (review denied by the Florida Supreme Court, 623 So.2d 493)(cert. den., 510 U.S. 957, 114 S.Ct. 415, 126 L.Ed.2d 361 (1993)), *Gomes v. State,* 621 So.2d 578 (Fla.App. 3 Dist. 1993), *Davison v. MacKinnon,* 656 So.2d 223 (Fla.App. 5 Dist. 1995) & *Colby v. State,* 675 So.2d 1025 (Fla.App. 4 Dist. 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)	**Crimes Compensation Trust Fund.** (continued) if injury or death resulted from the offense, a special fine of not more than **$10,000**. Note: This fine is contingent on the offender's ability to pay. §§960.25, 775.0835(1) & 938.03 **Special Court Cost.** A court cost of **$135** is added to any fine and is distributed as follows: **$25** is deposited into the EMS Trust Fund; **$50** is deposited into the Criminal Justice Standards and Training Trust Fund; and, **$60** is deposited into the Brain and Spinal Cord Injury Rehabilitation Trust Fund. §938.07 **Alcohol/Drug Assessment.** In addition to any other fine, a defendant may be assessed an amount not to exceed the maximum fine authorized for the offense. This assessment is used to finance alcohol and drug programs. §§893.13, 893.16 & 893.165 **Reinstatement Fee.** In addition to any other license reinstatement fee, a person, who has been either convicted of a DWI offense or found in violation of the admin. per se law, must pay a special fee of **$105**. This fee is paid into the Accident Reports Trust Fund. §322.12(2) **Program Fee.** A defendant, attending a DWI program, is assessed a **$10** fee which is used to support such program. §25.387(3)(a)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-99.
Administrative Per Se Law:	**Yes** ≥**0.08 BAC/BrAC** §§316.193 & 322.2615(1)(a) See Footnote No. 3 on p. 3-97. A violation-**Susp 6 mos** (30 dys mand A restricted hardship license may be issued after this mand period.) A violation where there has been two or more DWI offenses-**Susp 1 yr** (mand)[1] §§316.193, 322.2615(1)(a), (1)(b), (8)(b) & (10) and 322.271(2)(a) Persons Under 21 Years Old. ≥**0.02 BAC/BrAC** 1st violation-**Susp 6 mos** (30 dys mand); Subsequent violations-**Susp 1 yr** (30 dys mand) §322.2616(1)(a), (2), (9) & (11) See Footnote No. 2 on p. 3-98.
Other:	Under §§322.27(a)(1) & 322.28(1), a person's license may be susp for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	1st Off[2&3]-**Rev**; 2nd Off[2&3] (w/n 5 yrs)-**Rev**; 3rd Off[1&2] (w/n 10 yrs)-**Rev**; 4th off[2&3]-**Rev** §322.28

[1]**Comment:** The "actual" suspension period appears to be only 11 mos. The law provides that a person be issued a 30 dy temporary license at the time of arrest. However, since the law also provides that the suspension "commences" at the time of arrest, the person is only denied driving privileges for 11 mos. §322.2615(b)(1.b), (2) & (4) Unlike the mandatory suspension associated with an admin. per se violation where there has not been a prior drunk driving offense, the law does not provided that the mandatory suspension period start after the expiration of the 30 dy temporary license.
[2]Under §316.655(5), a court can susp/rev a driver's license, in addition to any other sanction which may be authorized, for a violation of any law regarding motor vehicles. In considering whether to exercise this privilege, the court considers the "totality of the circumstances", the need to protect the motoring public and the severity of the offense committed.
[3]This revocation applies to both non-injury and injury related DWI offense convictions. §322.28(2)

Sanctions Following a Conviction for a DWI Offense:
(continued)

	Special Note: Rev is permanent if there is an alcohol off in connection with a veh manslaughter/homicide off. §§322.26 & 322.28(2)(e)
Term of License Withdrawal (Days, Months, Years, etc.):	1st Off-**180 dys-1 yr**; 2nd Off (w/n 5 yrs)-Not less than **5 yrs**; 3rd off (w/n 10 yrs)-Not less than **10 yrs**.; and 4th off **-Permanently** §322.28
Mandatory Minimum Term of Withdrawal:	1st Off-**None**[1]; 2nd Off (w/n 5 yrs)-**12 mos**[2]; 3rd Off (w/n 10 yrs)-**24 mos**[2]; 4th Off-**5 yrs**[3] §§322.271(2)(b) & 322.28
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** A substance abuse course/alcohol treatment program is required for a defendant convicted of any DWI off. §§316.193(5) & 322.291 Such a course must be successfully completed by defendants who have been convicted of either two DWI offs (w/n 5 yrs) or 3 such offs (w/n 10 yrs) before their license can be restored. §322.03(2)
Alcohol Treatment:	See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	**None**
Other:	**Impoundment or Immobilization.** The motor vehicle used in the offense may be either impounded or immobilized as follows: 1st off-10 dys; 2nd off (w/n 3 yrs)-30 dys; 3rd off (w/n 5 yrs)-90 dys.

[1]A temporary restricted use license for business/employment may be issued for 45 dys following the completion of either a driver training program or substance abuse course. The law is silent as to whether this license can be renewed for additional 45-day periods. §322.271(1) & (2)

[2]After this period of time, a restricted occupational license may be issued. Before such restricted driving privileges are granted, the person must demonstrate that they have been drug-free for 12 mos. §322.271(2)(b)

[3]After this period of time, a person is eligible for restricted occupational driving privileges for not less than 1 yr and unrestricted privileges thereafter. Before being granted these privileges by the State licensing agency, the person must demonstrate that they have been drug-free for five (5) years and that they have completed a substance abuse driver training course. Following the granting of such privileges, the person must continue to participate in a substance abuse program. §322.271(4)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if they are convicted of the following offenses: They drive a CMV while (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. (Note: A "conviction" includes an administrative determination as well as a criminal law conviction.) For either (1) a subsequent conviction or (2) a combination of two or more convictions of any of the above listed items, the "disqualification" is permanent. (**Comment:** There is an inconsistency in the law. Under §322.64(1)(b) & (8)(b), if the "disqualification" is based on a violation of §316.193 with an unlawful blood alcohol level (i.e., a BAC ≥0.08), the periods of "disqualification" are six (6) months for a first violation and one (1) year of a subsequent one. This obviously is inconsistent with the previously listed "disqualifications" as provided in §§322.61 and 322.64(8)(a).) A CMV operator, who has any amount of alcohol in their system, must be placed "out-of-service" for 24 hours and is subject to a moving violation civil penalty of $52 plus a $5 assessment. §§318.18(3) & (12), 322.01(3), 322.01(8), 322.01(14), 322.01 (29), 322.39, 322.61(3), 322.61(4), 322.61(5), 322.62, 322.63, 322.64(1)(b) & (8), 775.082(4)(b), 775.083(1)(e) & Ch. 90-253

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)

This action may not be concurrent with probation or imprisonment. The court may decided not to order the action if the family of the vehicle owner "has no other public or private means or transportation." §316.193(6)(d)

Miscellaneous Sanctions
Not Included Elsewhere:

Special Note: Under §322.291, a defendant is required to complete a driver training course.
Medical Facility Visitation Requirement. A person under 18 years old, who is convicted of a DWI offense, may be ordered by the court to visit medical facilities that treat victims of traffic accidents. §322.0602
Ignition Interlock. A DWI defendant, who is placed on probation and who is otherwise "permitted" to operate a motor vehicle, may be required to operate vehicles equipped with "ignition interlock" devices for not less than 6 mos. §316.1937 In addition, the licensing agency may require any person seeking reinstatement of their driving privileges to use an "ignition interlock" device on their vehicle. §322.271(2)(d) This requirement can apply to either occupational restricted or "regular" driving privileges. However, there is a limited exemption in situations where such a person is operating a vehicle while in the course of employment.
Probation Requirements. As part of its general powers in proscribing conditions of probation, a court may require a person convicted of a DWI offense (1) to place a **bumper sticker** on their vehicle that identifies them as a convicted DWI offender, who is operating a motor vehicle on a restricted license, or (2) to place, at their own expense, an advertisement in a local newspaper along with their photograph that identifies them as DWI offender. These probation conditions have been held to be constitutional under both the Federal and State constitutions. *Lindsay v. State,* 606 So.2d 652 (Fla.App. 4 Dist. 1992), & *Goldschmitt v. State,* 490 So.2d 123 (Fla.App. 2 Dist. 1986).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

See Footnote No. 1.
Yes I. DWI (DUI) Manslaughter (a death related to a drunk driving offense)-Felony 2nd degree II. Manslaughter (death related to veh. operation where there is negligent action without lawful justification)-Felony 2nd degree III. Veh Homicide (death related to reckless veh. operation)-Felony 3rd degree §§316.193(3)(c)(3), §782.07 & 782.071

[1]Under §322.34(3), it is 3rd degree felony for a person to carelessly or negligently cause death or serious bodily injury to another with a motor vehicle while the person's license is either suspended or revoked and where the basis of the suspension or revocation was (1) a 2nd DWI off, (2) veh. manslaughter, (3) veh. homicide or (4) a DWI off. that requires an enhanced sanction. See Footnote No. 1 on p. 3-99. Sanctions: Jail-not more than 5 yrs (§775.082(3)(d); fine-not more than $5,000 (§775.083(1)(c).

Other Criminal Actions Related to DWI: (continued)

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Felony 2nd degree-Not more than **15 yrs** Felony 3rd degree-Not more than **5 yrs** §775.082(c) & (d)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Felony 2n degree-Not more than **$10,000** Felony 3rd Degree-Not more than **$5,000** §775.083(1)(b) & (c)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** (All offenses) §322.28(3)(e) & (5)(a)
Length of Term of Licensing Withdrawal:	I. DWI (DUI) Manslaughter-**3 yrs** (minumum) II. Manslaughter-**3 yrs** (minimum); if related to a DWI offense conviction-**Permanent** III. Veh Homicide-**3 yrs** (minimum); if related to a DWI offense conviction-**Permanent** §322.28(2)(e) & (5)(a)
Mandatory Action--Minimum Length of License Withdrawal:	I. DWI (DUI) Manslaughter-**3 yrs** II. Manslaughter-**3 yrs**; if related to a DWI offense conviction-**5 yrs**[1] III. Veh Homicide-**3 yrs**; if related to a DWI offense conviction-**5 yrs**[1] §322.28(2)(e) & (5)(a)
Other:	A defendant may be required to pay restitution to a victim. §775.089 Under §322.291, a defendant must complete a driver training course. See Crimes Compensation Trust Fund on p. 3-99.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote No. 2 and the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	1st off (Misd 2nd degree)-Not more than **60 dys**; 2nd off (Misd 1st degree)-Not more than **1 yr**; 3rd or sub off (Felony 3rd degree)-Not more than **5 yrs** §§322.34(2) & 775.082

[1]After 5 yrs, a person is eligible for restricted occupational driving privileges for not less than 1 yr and unrestricted privileges thereafter. Before being granted these privileges, the person must demonstrate that they have been drug-free for 5 yrs and that they have completed a substance abuse driver training course. Following the granting of such privileges, the person must continue to participate in a substance abuse program. §322.271(4)

[2]A person, who has had their driving privileges revoked for either a DWI or vehicle homicide offense and who causes either a death or a serious bodily injury while operating vehicle while still revoked for these offenses, commits a 3rd degree felony. The sanctions for this offense are a term of incarceration of not more than 5 yrs and/or a fine of not more than $5,000. §§322.34(3), 775.082 & 775.083

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked and the person knew that their driving privileges had been suspended or revoked. §322.34(2) If the person had no knowledge of such action and they operate a motor vehicle, they commit a moving traffic infraction. §322.34(1) The sanction for such an infraction is not more than $500 ($60 if the person does not request a hearing). §§318.14(5), 318.18(3)(a) & 322.34(1)

Special Note: The following sactions apply if a person operates a CMV during a CDL disqualification: 1st off (1st Degree misd) a jail term ≤1 yr and/or a fine ≤$1,000; 2nd or sub off (3rd Degree felony) an imprisonment ≤5 yr and/or a fine ≤$5,000. And, for both 1st and subsequent offenders, driving privileges cannot be restored for an additional 3 mos. §322.28(3) & 322.34(4)

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	1st off-Not more than **$500**; 2nd off-Not more than **$1,000**; 3rd and sub off-Not more than **$5,000** §775.083
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	1st off-**Susp/Rev**; 2nd and subsequent offs-**Susp/Rev** §322.28(3) Important. See Footnote No. 1.
Length of Term of License Withdrawal Action:	1st off-An additional **3 mos**; 2nd and subsequent offs-An additional **3 mos** §322.28(3)
Mandatory Term of License Withdrawal Action:	**No** A restricted hardship license may be issued. §322.271
Habitual Traffic Offender Law:	
State Has a Such Law (Yes/No):	**Yes** §322.264
Grounds for Being Declared an Habitual Offender:	3 serious or 15 normal moving violations within a 5-yr period
Term of License Rev While Under Habitual Offender Status:	**Rev-5 yrs** §322.27(5) Note: After 12 mos, the offender may have his/her driving privileges restored. §322.271(1)(b) **Special Note:** Under §322.291, a defendant is required to complete a driver training course.
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	3rd Degree felony §322.34(5)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **5 yrs** §775.082
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$5,000** §775.083
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**Rev** period extended an additional **3 mos** §322.28(3)

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	

[1]The vehicle used in the offense, if it is owned of the driver, is impounded by law enforcement officials. The vehicle remains impounded until the owner presents proof either (1) of insurance or (2) of sale of the vehicle to anther person. §322.34(5)

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[1] (Year Eff: 1985) §562.11(1)(a) & (2)
Minimum Age (Years) Possession:	**21** Except for employment purposes §562.111
Minimum Age (Years) Consumption:	**None**[2]
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes Limited** §768.125 See Footnote Nos. 3 & 4.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No**[5]
Dram Shop Actions-Social Hosts:	**Limited** *Bankston v. Brennan,* 507 So.2d 1385 (Fla. 1987), & *Newsome v. Haffner,* 710 So.2d 184 (Fla.App. 1 Dist. 1998)[6]
Other:	A patron, who is a known "habitual drunkard," can hold a licensee liable, under the dram shop law, for injures they sustain as a result of becoming intoxicated at the licensee's establishment. *Ellis v. N.G.N. of Tampa,* 586 So.2d 1042 (Fla. 1991)

[1]It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to "misrepresent" their age in order to obtain alcoholic beverages. §562.11(2)

[2]Under §562.11(1)(a), it is illegal for a licensee to allow a minor to consume alcoholic beverages on their premises.

[3]This law limits liability to damages caused either (1) by selling or furnishing alcoholic beverages to persons under the legal drinking or (2) by knowingly serving alcoholic beverages to persons who are habitually addicted to alcohol. *Peoples Restaurant v. Shbo,* 591 So.2d 907 (Fla. 1991) **Comment:** Concerning this law, several things should be kept in mind. I. For injuries caused by a minor, the injured party must prove that alcoholic beverages were "willfully and unlawfully" served to the minor by the licensee. For injuries caused by an habitual drunkard, the injured party must prove that alcoholic beverages were only "knowingly" served by the licensee. *Ellis v. N.G.N. of Tampa,* 586 So.2d 1042 (Fla. 1991) II. Also, liability does not apply in situations were injury causing habitual drunkards are sold alcoholic beverages in closed containers. Liability only occurs if such persons are served alcoholic beverages for consumption on the premises. *Persen v. Southland Corp.,* 656 So.2d 453 (Fla. 1995)

[4]Under certain conditions, a licensee may be held liable for the actions of an intoxicated minor to whom they have not sold alcoholic beverages. Such is the case if an under age person is allowed to purchase alcoholic beverages where the licensee is "on notice" that the purchaser will give such beverages to another minor who could become intoxicated and cause injury to a third party. I.e., the licensee is considered to have sold or furnished alcoholic beverages to both minors. *O'Neale v. Hershoff,* 634 So.2d 644 (Fla.App. 3 Dist. 1994)

[5]The Dram Shop Law places certain limits on this type of liability. It appears that previous case law has been abrogated by this statute. *Migliore v. Crown Liquors of Broward, Inc.,* 448 So.2d 978 (Fla. 1984), & *Bennett v. Godfather's Pizza, Inc.,* 570 So.2d 1351 (Fla.App. 3 Dist. 1990)

[6]I. Despite the *Bankston* decision above, an employer may be held liable, via a respondeat superior, for the negligent actions of an intoxicated employee while attending a convention related to the employer's business. The court considered the employee to be "in the course and scope of his employment". *Carroll Air Systems, Inc. v. Greenbaum,* 629 So.2d 914 (Fla.App. 4 Dist. 1993)
II. In *Newsome*, a social host was held liable for a minor's injuries that occurred after the minor consumed alcoholic beverages at a social function given by the host. In 1988, the legislature enacted §856.015 that makes it a criminal offense to host an "open house party" (a general social gathering of persons) where the social host has knowledge that alcoholic beverages are being consumed by minors. An appellate court has held that a violation of this statute which results in an injury to a minor creates a cause of action (negligence per se) by the minor against the social host.

Other State Laws Related to Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**None**[1]
Term of Imprisonment:	**None**
Fine ($ Range):	**None**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**No**[1]
Length of Term of License Withdrawal:	**N/A**
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** 2nd degree §562.11(1)(a)
Term of Imprisonment:	Not more than **60 dys** §775.082
Fine ($ Range):	Not more than **$500** §775.083
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes Susp or rev**[2] §561.29(1)(a) & (w)
Length of Term License Withdrawal:	Time period is not specified in the statute.
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §316.1963
Anti-Consumption Law (Yes/No):	**No**

[1]It is a 2nd degree misd (jail-not more than 60 days; fine-not more than $500) for a person (e.g., a licensee) to sell or dispose of intoxicating liquors to an individual after the seller or dispenser has written notice that such individual is an habitual drunkard. §§562.50, 775.082 & 775.083 A licensee is also subject to license suspension under §561.29(1)(a) & (b).
[2]Admin. sanctions may be mitigated if the licensee has been certified as a responsible vendor. Such a vendor must have provided special training to their employees/managers in how to sell alcoholic beverages so as not to violated the ABC laws by selling such beverages to minors. §561.701 et seq.

STATE:	**GEORGIA**
General Reference:	Code of Georgia Annotated (Code of 1981)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §40-6-391(a)(1) See the Special Note below.
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1&2] or **Any Amount of a Controlled Substance or Marijuana** (in the blood or urine)[3&4] §§40-1-1(1), 40-6-391(a)(5) & (6) and 40-6-392(b)(4) See the Special Note below. Persons Under 21 Years Old-≥**0.02**[1,2&5] §§40-6-391(k)(1) & 40-6-392(c)(2)
Presumption (BAC):	≥**0.08** §40-6-392(b)(3)
Types of Drugs/Drugs and Alcohol:	(1) Under the influence of **Any Drug**, (2) under the intentional influence of **Any Glue, Aerosol, or Other Toxic Vapor** or (3) under the combined influence of alcohol and/or any of the previous substances §40-6-391(a)(2), (3) & (4)
Other:	For Commercial Motor Vehicle Operators, see p. 3-113.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**[6]
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[7] §40-5-55(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §40-5-55(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes**[8] (Criminal Cases) §40-6-392(d), *Hassell v. State,* 442 S.E.2d 261 (Ga.App. 1994)[9] & *Allen v. State,* 494 S.E.2d 229 (Ga.App. 1997)
Other Information:	**None**

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 (0.02 for persons under 21 years old) or more.
[2]Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §40-1-1(1)
[3]The law, making it illegal to operate a motor vehicle with any amount of a control substance or marijuana in the blood or urine, has been held to be constitutional. No evidence of impairment by drugs is necessary. *Stevenson v. State,* 453 S.E.2d 18 (Ga. 1995)
[4]This applies in situations where the driver was not legally entitled to use the controlled substance(s)/marijuana. §40-6-391(a)(5)
[5]Except as noted, the sanctions for this offense are the same as for any other drunk driving offense.
[6]Law enforcement officers are using preliminary breath testing devices without express legislative authorization. Such use has not been subject to court challenge. However, the Georgia Supreme Court has noted such use. *Keenan v. State,* 436 S.E.2d 475 (Ga. 1993)
[7]**Comment:** It appears that an arrest is not required if there is "reasonable grounds" to believe that a person was DWI and they were involved in an accident that resulted in either serious injury or death. §40-5-55(a)
[8]Refusal to submit to a PBT can also be admitted into evidence at a DWI trial. *Keenan v. State,* 436 S.E.2d 475 (Ga. 1993)
[9]Note: If proper warnings are not given, evidence of refusal may not be admissible. *State v. Leviner,* 443 S.E.2d 688 (Ga.App. 1994)

Special Note: The courts have held that §40-6-391 establishes one offense namely that of "driving under the influence". Subsection (a)(1), the standard DWI offense, and subsection (a)(5), the 0.10 (formally 0.12) illegal per se offense, represent two (2) different methods of proving this "one" offense. *Kuptz v. State,* 345 S.E.2d 670 (Ga.App. 1986), & *French v. State,* 401 S.E.2d 67 (Ga.App. 1990) (affirmed by the Georgia Supreme Court, 405 S.E.2d 35 (Ga. 1991))

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes**[1] §40-5-55(a)
Urine:	**Yes**[1] §40-5-55(a)
Other:	**"Other Bodily Substance"** §40-5-55(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**[2]
Anti-Plea Bargaining Statute (Yes/No):	**No**[2]
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** 1st and 2nd DWI offense convictions §40-5-1(9)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**Susp 1 yr** (mand) §40-5-67.1(d)
Other:	

Sanctions Following a Conviction for a DWI Offense: See Footnote Nos. 1 & 2 on p. 109.

Criminal Sanctions:	See Double Jeopardy below.
Imprisonment:	1st off (Misd)-**10 dys to 12 mos**; 2nd off (w/n 5 yrs) (Misd)-**90 dys to 12 mos**; 3rd and subsequent offs (w/n 5 yrs) (High and Aggravated Misd)-**120 dys to 12 mos** §40-6-391(c) & (k) Persons Under 21 Years Old: These offenders must be kept segregated from all other offenders. §17-10-3.1(b) Also, such persons, if convicted of operating a motor vehicle with a BAC/BrAC level ≥0.02, at the discretion of the court may be sentenced to serve imprisonment time either on weekends or during nonworking hours. §17-10-3.1(a)

[1]The law further provides that a blood test with a "drug screen" be administered to driver's involved in accidents that result in either a serious injury or death. This requirement, however, is not "mandatory". §40-5-55(a)

[2]The court cannot except a *nolo contendere* plea in two situations. (1) For a violation of the illegal per se provision, where the offender's BAC or BrAC was ≥0.15 or (2) for a violation of §40-6-391(k), where a person under 21 years old was operating a motor vehicle with a BAC or BrAC ≥0.02. §§40-6-391(k)(3) & 40-6-391.1(a)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the admin per se law, may also be subsequently prosecuted for DWI. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Jackson v. State,* 462 S.E.2d 802 (Ga.App. 1995), *Nolen v. State,* 463 S.E.2d 504 (Ga.App. 1995), *Kirkpatrick v. State,* 464 S.E.2d 882 (Ga.App. 1995), *Howard v. State,* 465 S.E.2d 281 (Ga.App. 1995), *Walsh v. State,* 469 S.E.2d 526 (Ga.App. 1996), *Martinez v. State,* 471 S.E.2d 551 (Ga.App. 1996), and *Smith v. State,* 471 S.E.2d 591 (Ga.App. 1996)

Sanctions Following a Conviction for a DWI Offense: (continued)	See Footnote Nos. 1 & 2 below.
Mandatory Minimum Term:	1st off-**24 hrs**[3] if BAC/BrAC was ≥0.08; 2nd off (Misd)-**48 hrs**[3]; 3rd and sub. offs (w/n 5 yrs) (High and Aggravated Misd)-**10 dys**[3]
Fine: Amount ($ Range):	1st off (Misd)-**$300 to $1,000**; 2nd off (w/n 5 yrs) (Misd)-**$600 to $1,000**; 3rd and subsequent offs (w/n 5 yrs)(High and Aggravated Misd)-**$1,000 to $5,000** §40-6-391(c) & (k)
Mandatory Minimum Fine ($):	1st off (Misd)-**$300**; 2nd off (w/n 5 yrs) (Misd)-**$600**; 3rd and subsequent offs (w/n 5 yrs)(High and Aggravated Misd)-**$1,000** or a $500 fine on condition that the defendant undergoes an alcohol or drug treatment program (§40-6-391(g)(2)) **Special Note:** The court may allow the defendant to pay the fine in installments if they can show that it would be an "extreme hardship" to pay the entire amount at once. §40-6-391(g)(1)
Other Penalties: Community Service:	1st off (Misd)-Not less than **40 hrs** (40 hrs mand)[3];-2nd off(w/n 5 yrs)(Misd)-Not less than **80 hrs** (80 hrs mand)[3]; 3rd and subsequent offs (w/n 5 yrs)(High and Aggravated Misd)-Not less than **20 dys** (20 dys mand)[3] §40-6-391(c) Persons Under 21 Years Old with an alcohol concentration of <0.08: 1st off-Not less than **20 hrs** (20 hrs mand); 2nd or sub off-Not less than **40 hrs** (40 hrs mand) §40-6-391(c)(1)(C), (c)(2)(C) & (c)(3)(C)
Restitution (eg Victim's Fund)	**Yes** (1) A defendant may have to pay restitution (or other relief to a victim) as a condition of probation. §17-14-1 et seq. (2) A victim may also receive payment from the State's victims' compensation fund. §17-15-1 et seq. Awards are limited to a maximum amount of $1,000. §17-15-8(c)
Other:	3rd off-Defendant's name, address and photograph shall be published in the "legal organ of the appropriate county." A fee of $25 fee is charged to cover publication costs. §40-6-391(j) **Assessment.** A DWI offender must pay an assessment penalty of $25 or 10 percent of the original fine whichever is less. This penalty is used to support the Crime Victims Emergency Fund. §§15-21-112 & 15-21-115 **Special Fine for the Peace Officer's Annuity and Benefit Fund.**[4] An additional fine equal to 5% of the original fine is imposed and deposited into this fund. §15-21-131

[1]DWI, where there is a **serious injury** (i.e., where a member of a person's body has been deprived, rendered useless or disfigured), is a felony. The sanction for this offense is imprisonment from **1 to 5 years**. §40-6-394 DWI while operating a **school bus** imprisonment from **1 to 5 yrs** and/or a fine of **$1,000 to $5,000**. §40-6-391.3

[2]**Child Endangerment.** It is a separate offense to transport a child under 14 yrs old while DWI. The sanctions for this offense are as follows: 1st off (misd)-jail 1 to 5 mos; fine $200 to $500; 2nd off (misd)-jail 3 mos to 1 yr; fine $400 to $1,000; 3rd and sub. off (felony)-jail 1 to 3 yrs; fine $1,000 to $5,000. §§16-12-1(d) & 40-6-391(l)

[3]An offender is subject to both a period of mandatory incarceration and mandatory community service. *Gidey v. State,* 491 S.E.2d 406 (Ga.App. 1997)

[4]**Special Penalty for the Brain and Spinal Injury Trust Fund.** An additional fine equal to 10% of the original fine is imposed and deposited into this fund. §§15-21-149, 15-21-150 & Article III, §IX, ¶VI(k) of the State Constitution

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)

Special Note: Under §17-10-8, the court in felony cases where probation is allowed may condition such probation upon the defendant paying a fine of not more than $100,000.

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

See Double Jeopardy on p. 3-108.
Yes ≥**0.10 BAC/BrAC** (≥0.02 for persons under 21 yrs old) See Footnote No. 2 on p. 3-107. §§40-5-67.1(c) & 40-5-67.2(a) 1st action-**Susp 1 yr** (License reinstatement after 30 dys and after completion of an Alcohol or Drug Use Risk Reduction Program. **Special Note:** An **ignition interlock** must be used for 6 mos following license reinstatement. §42-8-112(b) However, limited driving privileges may be granted at any time. §40-5-64(a) & (e) 2nd action (w/n 5 yrs)-**Susp 3 yrs** (120 dys mand with lic reinstatement after 120 dys) or 30 dys mand susp followed by 6 mos use of an **ignition interlock** device after which full driving privileges are reinstated; driving privileges are restricted following the 30 dy mand period up to 120 dys after the susp period has started. Before a license can be reinstated, an offender must have completed an Alcohol or Drug Use Risk Reduction Program.
3rd and sub action (w/n 5 yrs)-**Susp 5 yrs** (2 yrs mand) After 2 yrs, a person may be issued a "probationary" driver's license with the stitulation that they only operated vehicles equipped with an **ignition interlock** device. Before a license can be reinstated or a probationary license issued, an offender must have completed an Alcohol or Drug Use Risk Reduction Program. §§40-5-67.1, 40-5-67.2 & 42-8-112
See Miscellaneous Sanctions on p. 3-112.

Other:

None

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

Persons ≥21 Years Old: For **all** DWI offenses: 1st off-**Susp**; 2nd off-**Susp**; 3rd off (w/n 5 yrs)-**Rev** (See Habitual Traffic Offender Law on p. 3-114.) See Footnote No. 1. §§40-5-62(a)(1), 40-5-63, 42-8-111 & 42-8-112 DWI-Serious Injury-**Susp** §40-5-63(d)
See Miscellaneous Sanctions on p. 3-112.
Persons Under 21 Years Old: For **any** violation of the drunk driving laws (§40-6-391)-1st of sub off-**Rev** §40-5-57.1(a) & (b)

Term of License Withdrawal
(Days, Months, Years, etc.):

Persons ≥21 Years Old: I. For Alcohol and Non-controlled Substance (Drug) DWI Offenses: 1st off-**12 mos**[2]; 2nd offs-**3 yrs**[2]; 3rd off-**5 yrs** (See Habitual Traffic Offener Law on p. 3-114.) DWI-Serious Injury-**3 yrs**

[1]If the vehicle operator was below the driving age (age 16) at the time of the DWI offense, their privilege to obtain a driver's license must be "delayed" until they are 17 for a first offense and until they are 18 for a subsequent offense. However, the privilege may be reinstated if the person completes a DWI alcohol and drug use risk reduction program. §40-5-22.1
[2]See Footnote No. 1 on p. 3-111.

Sanctions Following a Conviction for a DWI Offense:
(continued)

	II. For Controlled Substance DWI Offenses: 1st off-Not less than **180 dys**; 2nd off-**3 yrs**; 3rd off-**5 yrs** §§40-5-63(a) & 40-5-75(a) Persons Under 21 Years Old: 1st off-**6 mos** or **12 mos** if alcohol concentration was ≥0.08 2nd or sub off-**12 mos** §40-5-57.1(b)
Mandatory Minimum Term of Withdrawal:	Persons ≥21 Years Old: I. For Alcohol and Non-controlled Substance (Drug) DWI Offenses: 1st off-**None**[1&2]; 2nd off-**120 dys**[1&3] or if a person is placed on probation, 30 dys mand. susp. followed by 6 mos use of an **ignition interlock** device after which full driving privileges are reinstated; driving privileges are restricted following the 30 dy mand period up to 120 dys after the susp period has started. 3rd off (w/n 5 yrs)-**2 yrs**[1&3] After 2 yrs, an offender may be issued a "probationary" driver's license with the stipulation that they only operate vehicles equipped with an **ignition interlock** device. (See Habitual Traffic Offender Law on p. 3-114. §40-5-63(a)(3)) DWI-Serious Injury-**3 yrs** See the Special Note on **ignition interlock** devices on p. 3-110. II. For Controlled Substance DWI Offenses: 1st off-**180 dys**[4]; 2nd off-**1 yr**[4]; 3rd off-**2 yrs**[5] §§40-5-63(a) & 40-5-75(a) Persons Under 21 Years Old: 1st off-**6 mos**[4] or **12 mos**[4] if alcohol concentration was ≥0.08 2nd or sub off-**12 mos**[4] §40-5-57.1(b) & (c)
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** See the Footnotes below.
Alcohol Treatment:	**Yes** See the Footnotes below.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Yes** **Forfeiture** (Appears to be Mandatory) A person's veh is subject to forfeiture if they are convicted of a 4th DWI offense and such off occurred while they were operating a veh in habitual offender status based on 3 prior DWI convictions. §40-6-391.2 In lieu of forfeiture and based on the financial hardship to the defendant's family, the court may order that the vehicle's title be transferred to another family member who is licensed and who needs the vehicle for employment or other family needs. §40-6-391.2(i)

[1]For 1st and 2nd DWI offense convictions, the license suspension period may be limited to only 120 days. Under §40-5-63(a)(1) & (2), a driver's license may be reinstated after 120 days of the suspension period have passed provided the defendant has completed a DWI alcohol or drug use risk reduction program. The offender must have completed this program before their license can be restored.
[2]For a 1st DWI offense conviction, a defendant may receive for limited driving privileges in cases of "extreme hardship." §40-5-64
[3]For 2nd and 3rd DWI offense convictions, a defendant must complete an "alcohol or drug use reduction program" before their license can be restored. §§40-5-62(b) & 40-5-63(a)(2)
[4]Driving privileges (license) may be reinstated after this period provided the offender has completed an Alcohol or Drug Use Risk Reduction Program.
[5]Driving privileges (license) may be reinstated after this period provided the offender has completed a drug treatment program and a refusal to allow such privileges (issue such a license) would cause "extreme hardship".

Sanctions Following a Conviction for a DWI Offense:
(continued)

Terms Upon Which Vehicle Will Be Released:	**None**
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	I. For a 1st or 2nd DWI conviction listed under admin. action I or II on p. 3-111, a person's license cannot be reinstated until (1) they have completed an alcohol or drug risk reduction program and (2) they have paid a reinstatement fee of $210 ($200 if processed by mail). §§40-5-63(a)(1) & (2) and 40-5-67.2(a)(1) II. The court has the authority to order a defendant "to wear a fluorescent pink plastic bracelet imprinted with the words 'D.U.I. CONVICT' ...." (436 S.E.2d at 794) as a condition of probation. *Ballenger v. State,* 436 S.E.2d 793 (Ga.App. 1993)

Other Criminal Actions Related to DWI:

Homicide by Vehicle: State Has Such a Law:	**Yes** Three Types: I. Vehicle Homicide in the first degree (Felony)-Death where there is no "malice aforethought" but where there is either reckless driving or a DWI offense. II. Vehicle Homicide in the Second Degree (Misd)-Where the death is caused "without an intention to do so" and where there is neither reckless driving nor a DWI offense. III. Vehicle Homicide in the First Degree (Felony)-Death where the defendant is an "Habitual Violator", his/her license has been revoked and there is no "malice aforethought". §§16-1-3(5) (defines a felony offense) & 40-6-393
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	I. **2 to 15 yrs** (§40-6-393); II. Not more than **12 mos** (§17-10-3(a)(2)); III. **3 to 15 yrs** (§40-6-393)
Mandatory Minimum Term:	I. **None**; II. **None**; III. **1 yr** (§40-6-393)
Fine ($ Range):	I. **None**[1]; II. Not more than **$1,000** (§17-10-3(a)(2)); III. **None**[1] See **Special Fine for the Peace Officer's Annuity and Benefit Fund** on p. 3-109.
Mandatory Minimum Fine:	**None** (This applies to all veh. homicide offs.)

[1]Under §17-10-8, the court as a condition of probation for a felony offense may require an offender to pay a fine of not more than $100,000.

Comment: A "narrow" interpretation of §§40-5-54(a)(1) and 40-5-63(a) would indicate that the same licensing sanctions apply to both Type II and Type III Vehicle Homicide offenses. I.e., the law "apparently" does not provide for special licensing sanctions for persons who are convicted of a Type III Vehicle Homicide Offense. However, it is more likely that a Type III Vehicle Homicide offender (1st or subsequent) would be subject to another license revocation for 5 yrs with 2 yrs mand. in as must as they would have, no doubt, been convicted of more than 3 serious traffic offenses w/n 5 yrs and would, therefore, be subject once again to the Habitual Violator Law (§40-5-58).

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:	See the Comment below.
Licensing Authorized and Type of Action:	**Susp/Rev** §§40-5-54(a)(1), 40-5-58 & 40-5-63
Length of Term of Licensing Withdrawal:	I. **Susp-3 yrs** (§40-5-63(e))/**Rev-5 yrs** if "Habitual Violator"; II. 1st off-**Susp-12 mos**; 2nd off (w/n 5 yrs)-**Susp-5 yrs**; 3rd off (w/n 5 yrs)-"Habitutal Violator"-**Rev-5 yrs** III. **Rev-5 yrs**
Mandatory Action--Minimum Length of License Withdrawal:	I. **Susp-3 yrs** (§40-5-63(e))/**Rev-5 yrs** if "Habitual Violator" (§40-5-58(f)); II. 1st off-**Susp-None**; 2nd off (w/n 5 yrs)-**Susp-120 dys**; 3rd off (w/n 5 yrs)-"Habitutal Violator"-**Rev-2 yrs** III. **Rev-2 yrs**
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote No. 1.
Sanction:	
Criminal:	
Imprisonment (Term):	1st off-**2 dys to 6 mos** (misd); 2nd and sub. off (w/n 5 yrs)(high and aggravated misd)-**10 dys to 12 mos** §40-5-121(a)
Mandatory Minimum Term of Imprisonment:	1st off-**2 dys**; 2nd and sub. off (w/n 5 yrs)-**10 dys** §40-5-121(a) Op. Atty. Gen. U92-4
Fine ($ Range):	1st off-**$500 to $1,000**; 2nd and sub. off (w/n 5 yrs)-**$1,000 to $2,500** §40-5-121(a) See **Special Fine for the Peace Officer's Annuity and Benefit Fund** on p. 3-109.
Mandatory Minimum Fine:	1st off-**$500**; 2nd and sub. off (w/n 5 yrs)-**$1,000** §40-5-121(a) & Op. Atty. Gen. U92-4

[1]It is a misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a fine of not less than $500 and a CDL suspension for 6 mos. §§40-5-146(b) & 40-5-159(c) In addition, a person, who violates an out-of-service order, is subject to the following disqualification periods: 1st violation-90 dys to 1 yr; 2nd violation-1 to 5 yrs; and, 3rd or sub. violation-3 to 5 yrs. The minimum period of disqualification appears to be mandatory. §40-5-151(g)
*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either susp or rev.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (mand) (not less than 3 yrs (3yrs mand) if transporting hazardous materials) if they are convicted of driving a CMV (1) with a BAC/BrAC/UrAC ≥0.04 percent by weight of alcohol or more in the blood, breath or urine (Note: The usual standards for alcohol concentrations in the blood (grams of alc. per 100 milliliters of blood), breath (grams of alc. per 210 liters of breath) or urine (grams of alc. per 67 milliliters of urine) are listed in the CMV law. However, since the disqualification provisions use the term "percent by weight", there is a question as to whether such standards apply to these provisions.), (2) while under the influence of alcohol or any drug or (3) of a refusal to submit to a chemical test for alcohol concentration. (Note: The CMV implied consent provision, §40-5-153, applies to the testing for both an alcohol concentration and for the presence of drugs; however, the disqualification provision, §40-5-151(a)(2), applies only to a refusal to submit to a test for an alcohol concentration.) For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). It is a misd. to operate a CMV with a BAC ≥0.04; the only sanctions for this offense are the fines associated with DWI offense convictions. In addition, a CMV operator, who has any measurable amount of alcohol in their system, must be placed "out-of-service" for 24 hours. §§40-5-67.1(c), 40-5-142(2), (7), (9), (10) & (21), 40-5-151, 40-5-152, 40-5-153, 40-6-391(i) and 40-6-392(c)(1)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev** §40-5-121(b)(2) & (c)
Length of Term of License Withdrawal Action:	Original susp or rev period is extended **6 mos**
Mandatory Term of License Withdrawal Action:	Original susp or rev period is extended **6 mos**
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §40-5-58
Grounds for Being Declared an Habitual Offender:	3 or more serious violations w/n 5 yrs
Term of License Rev While Under Habitual Offender Status:	**Rev 5 yrs**[1] §40-5-62(c)(1) **Special Note:** A drunk driving offender, who is subject to license revocation as an habitual offender, must have the license plates of the vehicles they own surrendered to the court. Specially numbered plates may be issued for such vehicles provided the offender has a limited or probationary license or some other member of the offender's household has a valid license. Such special plates shall not constitute probable cause to stop a motor vehicle. §40-2-136
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Felony**[2] §§16-1-3(5) & 40-5-58(c)(1) & (2)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**1 to 5 yrs** §40-5-58(c)(1) & (2)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not less than **$750** §40-5-58(c)(1) If habitual offender status was based only on DWI offense convictions, not less than **$1,000** §40-5-58(c)(2) See **Special Fine for the Peace Officer's Annuity and Benefit Fund** on p. 3-109.
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

[1]A 3 yr probationary restricted hardship license may be issued after 2 yrs of the rev period have passed. The issuance of a probationary license must be based upon "extreme hardship" which is defined as a need for transportation to go to and from employment, medical care facilities, school or college, or court ordered alcohol or drug treatment programs. The person is also required to complete defensive driver course or an alcohol or drug risk reduction program before this probationary license can be issued. §40-5-58(e). However, if habitual offender status is based on two or more DWI offense convictions, the use of a probationary license is conditioned of the use of an **ignition interlock** device. See the Special Note on p. 3-110. §42-8-112 **Special Note:** A probationary license is not available if (1) the person's regular license has been revoked for a DWI related death (§40-5-58(f)), (2) the person has been convicted of any other motor vehicle related death (§40-5-58(e)(1)(B)) or (3) the person has been convicted of violating either the alcoholic beverage control law or the controlled substances law. (§40-5-58(e)(1)(D)).

[2]It a misdemeanor (jail-not more 12 mos; fine-not more than $1,000) to operate a vehicle without a license after the 5 yr revocation has passed. §§17-10-3(a) & 40-5-58(c)

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Possible** §§45-16-27 & 45-16-46 and Ops. Att. Gen. U79-10 & U80-56 A chemical test may be obtained via the coroner or medical examiner.[1]
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Possible**
Vehicle Passengers:	**Possible**
Pedestrian:	**Possible**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1986) §3-3-23(a)(1) & (2)
Minimum Age (Years) Possession:	**21** §3-3-23(a)(2) & (b) Exceptions: Medical purposes, religious ceremonies, and home use with parental consent.
Minimum Age (Years) Consumption:	**None**
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes Limited** §51-1-40(b)[2&3] See the Special Note below.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No**[4]
Dram Shop Actions-Social Hosts:	**Yes**[4] **Limited** §51-1-40(b) See the Special Note below.
Other:	A patron, who has been injured by a intoxicated patron at a social function, may bring a cause of action against the social host for damages. The cause of action is based on negligence in failing to maintain a safe premises. *Borders v. Board of Trustees, VFW,* 500 S.E.2d 362 (Ga.App. 1998)

[1]At the request of either a coroner or police officer, the medical examiner may take a blood sample from a person, who has been killed, for the purpose of determining the presence of intoxicating substances in such person. §45-16-46

[2]Also, under §51-1-18, a parent has a right to bring an action against any person who sells or furnishes alcoholic beverages to that parent's underage child without the parent's permission. *Eldridge v. Aronson,* 472 S.E.2d 497 (Ga.App. 1996)

[3]Sec. 51-1-40 has been held not to violate the due process clause of the U.S. Constitution. *Riley v. H & H Operations, Inc.,* 436 S.E.2d 659 (Ga. 1993)

[4]**Comment:** The following case law, it appears, has been abrogated, at least in part, by the dram shop law (§51-1-40(b)): *Sutter v. Hutchings,* 327 S.E.2d 716 (Ga. 1985); *Bishop v. Fair Lanes Bowling, Inc.,* 623 F.Supp. 1195 (D.C. Ga. 1985) (reversed and remanded on other grounds, 803 F.2d 1548 (11th Cir. 1986)); and, *Tibbs v. Studebaker's of Savannah,* 362 S.E.2d 377 (Ga.App. 1987).

Special Note: Action is limited to the selling, furnishing or serving of alcoholic beverages either (1) to persons under the legal drinking age (in a willful, knowing and unlawful manner) or (2) to persons who are "in a state of noticeable intoxication" and only for injuries and damages resulting from the operation of a motor vehicle "when the sale, furnishing, or serving is the proximate cause of such injury or damage." *Perryman v. Lufran, Inc.,* 434 S.E.2d 112 (Ga.App. 1993), and *Kappa Sigma Intern. Fraternity v. Toole,* 473 S.E.2d 213 (Ga.App. 1996) A motor vehicle passenger can recover damages from a licensee for any injuries they may have sustained in an accident while riding with an intoxicated driver who had became inebriated at the licensee's establishment. Liability applies even if the passenger also consumed alcoholic beverages with the vehicle operator at the establishment prior to the accident. The court held that a passenger is not considered a "consumer" under the dram shop law. *Griffen Motel Co. v. Strickland,* 479 S.E.2d 401 (GaApp. 1996)

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** §§3-1-2(2), 3-3-9, 3-3-22 & 17-10-3
Term of Imprisonment:	Not more than **12 mos**
Fine ($ Range):	Not more than **$1,000** See **Special Fine for the Peace Officer's Annuity and Benefit Fund** on p. 3-109.
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or cancellation** §3-2-3
Length of Term of License Withdrawal:	**2 yrs**
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	1st off- **Misd** Subsequent offs- **Misd** of a high and aggravated nature. §§3-1-2(2), 3-3-23, 3-3-23.1, 17-10-3 & 17-10-4
Term of Imprisonment:	For 1st and subsequent off-Not more than **12 mos**
Fine ($ Range):	1st off- Not more than **$1,000**; Subsequent off- Not more than **$5,000** See **Special Fine for the Peace Officer's Annuity and Benefit Fund** on p. 3-109.
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or cancellation** §3-2-3
Length of Term License Withdrawal:	**2 yrs**
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes Limited** Applies only to drivers §40-6-253
Anti-Consumption Law (Yes/No):	**No**

JURISDICTION:	**GUAM**
General References:	Guam Code Annotated (Updated through 1992)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol Title 16, §9104(a) & (f)
Illegal Per Se Law (BAC):	≥**0.10**[1] Title 16, §9104(b) & (g)
Presumption (BAC):	≥**0.10**[1] Title 16, §9104(j)(3)
Types of Drugs/Drugs and Alcohol:	Under (1) the influence of any drug[1] or (2) the combined influence of alcohol and any drug[1] Title 16, §9104(a) & (f)
Other:	

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	Note: This jurisdiction does not appear to have an implied consent law.
Arrest Required (Yes/No):	
Implied Consent Law Applies to Drugs (Yes/No):	
Refusal to Submit to Chemical Test Admitted into Evidence:	
Other Information:	

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	
Urine:	
Other:	

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	
Anti-Plea Bargaining Statute (Yes/No):	
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol Assessment Title 16, §9104.1

Sanction for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Suspension/Revocation):	**N/A**
Other:	
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**N/A**
Administrative Licensing Action (Suspension/Revocation):	**N/A**
Other:	

[1]Percent by wgt. of alcohol in the blood which is defined statutorily as grams of alcohol per 100 milliliters of blood. Title 16, §9104(j)(4) "Drug" means a controlled substance other than a prescription drug. Title 16, § 9104(a)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	(1) Non-Injury Related DWI Off-Misd-1st & sub. off-Not more than **1 yr** Title 9, §80.34 & Title 16, §9104(c) & (d) (2) Injury Related DWI off-Third Degree Felony-Not more than **5 yrs**[1] Title 9, §§1.19(b) & 80.30(c) and Title 16, §§9104(h) & 9106
Mandatory Minimum Term:	Non-Injury Related DWI Off-1st off-**None**; 2nd and sub off-**48 hrs**[2] Title 16, §9104(c) & (d)
Fine:	
Amount ($ Range):	(1) Non-Injury Related DWI Off-1st & sub. off-Not more than **$1,000**[3] Title 9, §80.50(c) (2) Injury Related DWI off-Not more than **$5,000**[3] Title 9, §80.50(b)
Mandatory Min. Fine ($):	Non-Injury Related DWI Off-1st & sub off-**$1,000**[2&3] Title 16, §9104(c) & (d)
Other Penalties:	
Community Service:	
Restitution (eg Victim's Fund):	A defendant may be ordered by the court to pay restitution to a victim.[3] Title 9, §80.53
Other:	
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Suspension/Revocation):	**Susp/Rev**[4] Title 16, §§3111 & 9104
Term of License Withdrawal (Days, Months, Years, etc.):	Non-Injury Related DWI Off[2]-1st and sub off-**Susp-90 dys to 6 mos** Title 16, §9104(c) & (d)

[1]For 1st offenders, the imprisonment term is not more than 3 yrs. Title 9, §80.31(c) However, repeat felony offenders may be subject to imprisonment terms of from 3 to 10 yrs. Title 9, §80.50(b)

[2]The mandatory sanctions associated with non-injury DWI offenses may also apply to injury related DWI ones. However, the law is not clear on this matter.

[3]The law provides that the court may designate whether the amount paid is a fine or restitution to victims.

[4]There is 1 yr rev (mand) for driving when addicted to the use of or under the influence of narcotic or other drug. Title 16, §31119(e)(2) Also, under Title 16, §3111(f), a driver's license is either suspended or revoked for driving while under the influence of "intoxicating liquor". The length of such suspension or revocation is not specified.

Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term of Withdrawal: Non-Injury Related DWI Off[1]-1st off-**None** (Limited driving may be granted for employment purposes.); 2nd off-**Susp-6 mos**; 3rd and sub off-**None**[2]

Other:
Rehabilitation:
Alcohol Education:
Alcohol Treatment:
Vehicle Impoundment/Confiscation: **Forfeiture**. For a 3rd or sub off, the vehicle used in the offense is subject to forfeiture. Title 16, §9104(e)
Special Note: In lieu of forfeiture, the offender's license may be suspended from 1 yr (mand) to 5 yrs. Title 16, §9104(e)

Authorized by Specific Statutory Authority:
Terms Upon Which Vehicle Will Be Released:
Other:

Miscellaneous Sanctions Not Included Elsewhere:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
Jurisdiction Has Such a Law: **No**
Sanctions:
Criminal Sanction:
Imprisonment (Term):

Mandatory Minimum Term:
Fine ($ Range):
Mandatory Minimum Fine:
Administrative Licensing Action: **Special Note:** Even though this jurisdiction does not have a vehicle homicide statute, it does provide for driver's license revocation for 1 yr (mand) in situations where a person has been convicted of criminal homicide resulting from the operation of a motor vehicle. Title 9, §16.20 & Title 16, §3111(e)(1)

Licensing Authorized and Type of Action:
Length of Term of Licensing Withdrawal:

[1]See Footnote No. 2 on p. 3-118.
[2]The law does not specifically provide for a mandatory license suspension for a 3rd or subsequent offense.

Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum Length of License Withdrawal:	
Other:	
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	
Sanction:	
Criminal:	
Imprisonment (Term):	**Petty Misd**-Not more than **6 mos** Title 9, §80.34(b) & Title 16, §3110
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$500**[1] Title 9, §80.50(d)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Suspension/Revocation):	**Susp/Rev** Title 16, §3111(k)
Length of Term of License Withdrawal Action	(1) For Operating While Suspended-Extend period of suspension for a like period (2) For Operating While Revoked-An additional **1 yr** period of revocation
Mandatory Term of License Withdrawal Action:	(1) For Operating While Suspended-Extend period of suspension for a like period (2) For Operating While Revoked-An additional **1 yr** period of revocation
Other:	
Habitual Traffic Offender Law:	
Jurisdiction Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Suspension While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	

[1]Or restitution up to this amount in lieu of the fine. Title 9, §80.50(d)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**18** (Year Eff: n.a.) Title 11, §3419
Minimum Age (Years) Possession:	
Minimum Age (Years) Consumption:	
Dram Shop Laws and Related Legal Actions:	
Jurisdiction Has a Dram Shop Law (Yes/No):	**No**[1]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the Case (Case Citation):	n.a.
Dram Shop Actions-Social Hosts:	n.a.
Other:	
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** Title 11, §§3418 & 3617
Term of Imprisonment:	Not more than **1 yr** Title 9, §80.34(a)
Fine ($ Range):	Not more than **$1,000**[2] Title 9, §80.50(c)

[1]Note: Under Title 20, §§2101 & 2102, a person, who suffers a loss as a result of someone's illegal act, may recover damages.
[2]Or restitution up to this amount in lieu of the fine. Title 9, §80.50(c)

Other Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** Title 11, §§3611 & 3616
Length of Term of License Withdrawal:	Time period for either susp or rev is not specified in the statute.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Petty Misd** Title 11, §§3611 & 3616
Term of Imprisonment:	Not more than **6 mos** Title 9, §80.34(b)
Fine ($ Range):	Not more than **$500**[1] Title 9, §80.50(d)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** Title 11, §§3611 & 3616
Length of Term License Withdrawal:	Time period for either susp or rev is not specified in the statute.
Anti-Happy Hour Laws/Regulations:	**No** However, Title 11, §3432 prohibits the service of more than 1 drink at a time to any person.
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes**[2] Title 16, §9105
Anti-Consumption Law (Yes/No):	**Yes**[3] Driver and Passengers Title 16, §9105

[1]Or restitution up to this amount in lieu of the fine. Title 9, §80.50(d)
[2]The law makes it an offense either to drink from or to open "a container of any alcoholic beverage" in a motor vehicle.
[3]Also, under Title 11, §3423, a person is prohibited from consuming alcoholic beverages "on any public highway or road."

STATE:	**HAWAII**
General Reference:	Hawaii Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor[1&2] §§291-4(a)(1) & 291-4.4
Illegal Per Se Law (BAC/BrAC):	**≥0.08**[1,3&4] §§291-4(a)(2) & 291-4.4 Persons Under 21 Years Old-**≥0.02 but <0.08**[4&5] §291-4.3(a)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of a **Controlled Substance** §§291-7[6] & 291-4.4
Other:	An alcohol concentration **≥0.08**[4] is considered "competent evidence" of driving under the influence if the either the blood or breath chemical test to determine such concentration was taken w/n 3 hrs of the offense. §291-5(a) For Commercial Motor Vehicle Operators, see p. 3-127.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§286-A, 286-151 & 286-155.5 Note: An arrest is needed before licensing action can be taken for a refusal to submit to a chemcial test.
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §§286-A & 286-151
Refusal to Submit Chemical Test Admitted into Evidence:	**Yes Limited** A refusal can be admitted into evidence at the administrative per se offense hearing. However, the law specifically prohibits the admission of such evidence in other criminal and civil cases. §286-159
Other Information:	**Special Note:** A blood, breath or urine sample may be obtained from a driver, without their consent, in order to obtain evidence of their being intoxicated by alcohol or under the influence of drugs if they are involved in a "collision" resulting in either injury or death to any person. §286-163(a) **Comment:**: This provision of the law is "silent" as to whether there must be "probable cause" of an offense (e.g., DWI) before a sample can be obtained. However, under §286-163(c) & (d), in either death or injury related DWI accidents where there is "probable cause" that a person has committed an offense (e.g.,DWI), law

[1]The offense of driving while under the influence of intoxicating liquor includes operating a motor vehicle with an alcohol concentration ≥0.10 (now ≥0.08). *State v. Grindles,* 777 P.2d 1187 (Hawaii 1989)

[2]Under the influence of intoxicating liquor means that the driver "is under the influence of intoxicating liquor in an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty[.]" §291-4(a)(1) Note: The term "intoxicating liquor" is defined to include all alcoholic beverages (spirits, wine and beer) containing one-half of one percent or more alcohol by volume. §§281-1 & 291-1

[3]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

[4]Standards: (1) Grams of alc. per 100 cubic centimeters or milliliters of blood or (2) grams of alc. per 210 liters of breath. §§291-4(a)(2), 291.4.3(a), 291-4.4 & 291-5(a)

[5]The law makes it illegal for a person <21 yrs old to operate a motor vehicle with "a measurable amount of alcohol concentration." However, "measuarable amount of alcohol" is defined to mean a BAC/BrAC ≥0.02 but <0.08. §291-4.3(a)

[6]*State v. Engcabo,* 784 P.2d 865 (Hawaii 1989)

Chemical Breath Tests for Alcohol Concentration:

enforcement officers can request that medical facility personnel recover a blood sample (for intoxication evidence purposes) from such a person, provided such person has been admitted for treatment.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** For alcohol or drugs §286-151(c) & (d)
Urine:	**Yes** For drugs §286-151(d)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol assessment (screening) is required for all persons who have been convicted of an alcohol related DWI offense.[1] Substance abuse assessment (screening) is required for all persons who have been convicted a 2nd or 3rd time of a drug related DWI offense.[1] §§291-4(c) & 291-7(c) Also, if a person's license is revoked under the administrative per se law, they must undergo alcohol screening. §286-261(d)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	See Persons Under 21 Years Old on p. 3-127.
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st action-**Rev-1 yr** (mand)[2]; 2nd action (w/n 5 yrs)-**Rev-2 yrs** (mand); 3rd action (w/n 7 yrs)-**Rev-4 yrs** (mand); 4th & sub. actions (w/n 10 yrs)-**Rev-For Life** (mand) For persons under 18 years old, their license is revoked until they reach 18 or for the normal revocation period whichever is longer. §§286-A, 286-257(b) & 286-261(b)(5)
Other:	**None**

[1]The offender pays the cost for this assessment. §§286-261(d), 291-4(c) & 291-7(c)
[2]**Ignition Interlock.** Persons, who have refused to submit to a chemical test for the first time, may be required to use vehicles equipped with "ignition interlock" devices. §286-264(d)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Notes and Double Jeopardy below. See Persons Under 21 Years Old on p. 3-127.
Imprisonment:	Petty Misdemeanors: 1st alcohol off[1]-**48 hrs**[2] **to 5 dys**; 1st drug off[1]-**48 hrs**[2]; 2nd alcohol off (w/n 5 yrs)-**48 con hrs to 14 dys**; 2nd drug off (w/n 5 yrs)-**Not less than 48 con hrs**; 3rd alcohol off (w/n 5 yrs)-**10 to 30 dys**; 3rd drug off (w/n 5 yrs)-**10 to 180 dys** Cl C Felony: 4th or sub off (See Special Note No. 3.) (w/n 10 yrs)-Not more than **5 yrs** §§291-4, 291-4.4, 291-7, 701-107(5) & 706-660
Mandatory Minimum Term:	2nd alcohol or drug off (w/n 5 yrs)-**48 cons hrs**; 3rd alcohol off (w/n 5 yrs)-**10 dys** (with at least 48 cons hrs); 3rd drug off (w/n 5 yrs)-**10 dys** §§291-4(b)(2)(B)(ii) & (3)(C) and 291-7(2)(B)(ii) Important. See Alternative Programs on p. 3-128.
Fine:	
Amount ($ Range):	Petty Misdemeanors: 1st alcohol or drug off-**$150 to $1,000**[2]; 2nd alcohol off (w/n 5 yrs)-**$500 to $1,500**; 2nd drug off (w/n 5 yrs)-**$500 to $1,000**; 3rd alcohol off (w/n 5 yrs)-**$500 to $2,500**; 3rd drug off (w/n 5 yrs)-**$500 to $1,000** Cl C Felony: 4th or sub off (See Special Note No. 3.) (w/n 10 yrs)-Not more than **$10,000** §§291-4, 291-4.4, 291-7, 701-107(5) & 706-640
Mandatory Minimum Fine ($):	2nd & 3rd offs (alcohol or drugs)(w/n 5 yrs)-**$500**[3]
Other Penalties:	
Community Service:	1st off (alcohol or drug off)-**72 hrs**[2]; 2nd off alcohol off (w/n 5 yrs)-**100 hrs**; 2nd drug off (w/n 5 yrs)-**80 hrs** as an alternative to imprisonment §§291-4 & 291-7
Restitution (eg Victim's Fund)	**Yes** I. Direct compensation paid by defendants to the victims §706-605(d)[4] II. Also, payment from a State Compenstaion Fund. §351-52 et seq.
Other:	**Home detention** may be assigned as a condition of probation. §706-624(2)(p)

[1]An alcohol offense means driving either while under the influence of intoxicating liquor or with an alcohol concentration ≥0.08. A drug offense means driving while under the influence of a controlled substance.
[2]The Court must sentence a person convicted of a 1st off to at least one of the sanctions listed but it has the authority to sentence such person to more than one such sanction.
[3]*State v. Auakuelo,* 683 P.2d 400 (HawaiiApp. 1984)
[4]Note: The payment of restitution shall have priority over the payment of the fine. §706-605(b)

Special Note No. 1: "Documentary and testimonial evidence provided by an arrestee" at an administrative per se proceeding cannot be admitted into evidence against the arrestee in a DWI criminal offense trial. §286-253(a)

Special Note No. 2. Except as noted in Special Note No. 4 below, a prior alcohol offense (drug offense) does not include a prior drug offense (alcohol offense).

Special Note No. 3. A person, who has been convicted of 3 or more alcohol/drug offenses or a combination thereof, commits an Habitually Driving Under the Influence of Intoxicating Liquor or Drugs Offense (a Cl C Felony). §291-4.4

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Higa,* 897 P.2d 928 (Hawaii 1995), *State v. Toyomura,* 904 P.2d 893 (Hawaii 1995), *State v. Okuno,* 915 P.2d 700 (Hawaii 1996), & *State v. Ontiveros,* 923 P.2d 388 (Hawaii 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)	**Driver Education and Training Assessments.** An offender is subject to an additional assessment of **$100** which is to be used to defray the costs of the driver education and training program. The payment of this assessment can only be waived if the court determines that the defendant is unable to pay it. §286G-3
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Special Notes below and Double Jeopardy on p. 3-125.
Administrative Per Se Law:	**Yes ≥0.08 BAC/BrAC**[1] or **Under the Influence of Intoxicating Liquor** §§286-251 & 286-258(d) 1st action-**Rev-3 mos**[2&3] (30 dys mand); 2nd action (w/n 5 yrs)-**Rev-1 yr** (mand)[3]; 3rd action (w/n 7 yrs)-**Rev-2 yrs** (mand)[3]; 4th & sub. actions (w/n 10 yrs)-**Rev-For Life** (mand)[3] §286-261(b) & *Gray v. Administrative Director of Court,* 931 P.2d 580 (Hawaii 1997) **Persons Under 18 Years Old.** For persons under 18 years old, their license is revoked until they reach 18 or for the normal revocation period whichever is longer. §286-261(b)(5)
Other:	**None**
Post DWI Conviction Licensing Action:	See Special Note No. 2 below. See Persons Under 21 Years Old on p. 3-127.
Type of Licensing Action (Susp/Rev):	1st off-**Susp**[3&4]; 2nd off-**Susp**[3]; 3rd off-**Rev**[3] §§291-4, 291-4.5(a) & 291-7 The sanctions apply to both alcohol and drug offs. On p. 3-125, see Footnote No. 1 and Special Note No. 3.
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**90 dys**[3,4&5]; 2nd off-**1 yr**[3&5]; 3rd off-**1-5 yrs**[3&5]
Mandatory Minimum Term of Withdrawal:	1st off-**30 dys** with a restricted license for 60 dys[3,4&5]; 2nd off-**1 yr**[3&5]; 3rd off-**1 yr**[3&5]

[1]Standards: (1) Grams of alc. per 100 cubic centimeters or milliliters of blood or (2) grams of alc. per 210 liters of breath. §286-251
[2]For a first admin. per se action, a conditional (restricted) license for hardship purposes may be issued after 30 dys of revocation period have passed. §286-264(a)
[3]If a person's license is both revoked and suspended for the same occurrence under the admin. per se law and for a DWI offense conviction, the total time the person's driving privilege can be denied cannot exceed the longer of the two periods. §286-253(b)
[4]Note: For certain serious traffic law violations, e.g., an alcohol driving offense, a person recieves points on their driving record. A license is suspended from 1 to 6 months if a person accumulates 12 points on their record. For an alcohol driving offense conviction, a person receives from 4 to 8 points. Consequently, for a first conviction for an alcohol driving offense, a person could recieve up to a 6 month license suspension if they have accumulated 12 points as a result of this conviction and from other previous traffic law violations. §286-128
[5]The suspension or revocation begins after the offender is released from imprisonment. §291-4.5(a)

Special Note No. 1: The administrative per se law does not violate a person's constitutional right to due process of law. *Kernan v. Tanaka,* 856 P.2d 1207 (Hawaii 1993) (cert. den., 510 U.S. 1119, 114 S.Ct. 1070, 127 L.Ed.2d 389 (1994))

Special Note No. 2: If a person's license has been revoked for an administrative per se violation, their driving privileges cannot be suspended or revoked for a DWI offense conviction based on the same incident. However, if the administrative action is reversed, a person's diving privileges must be suspended or revoked based on the conviction. §291-4(b)(5)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	
Rehabilitation:	
Alcohol Education:	1st off - A mandatory 14 hr alcohol/drug abuse education or counseling program. §§291-4(b)(1)(A) & 291-7(b)(1)(A)
Alcohol Treatment:	The court may require either a 1st or sub. DWI offender to obtain appropriate treatment for an alcohol abuse problem. Treatment costs must be paid by the offender. §291-4(c)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**DWI Bodily Injury Offenses.** I. Serious bodily injury caused by negligent veh operation (negligent injury in the 1st degree)-Cl C felony: Jail-Not more than **5 yrs**; fine-Not more than **$10,000**. A mandatory imprisonment term of 1 yr, 8 mos if the person injured was either 60 years old or older, blind, paraplegic, quadriplegic or eight (8) years old or younger (**child endangerment**). II. Substantial bodily injury caused by negligent veh operation (negligent injury in the 2nd degree)-misd: Jail-Not more than **1 yr**; fine-Not more than **$2,000**. §§706-620, 706-640, 706-660, 706-660.2, 706-663, 707-705 & 707-706 **Ignitions Interlock.** Persons, who have been convicted of a 1st DWI offense, may be required to use vehicles equipped with "ignition interlock" devices. §286-264(d)

Persons Under 21 Years Old. Refusal. If a person <21 yrs old refuses to submit to test for alcohol concentration after having been arrested for driving with BAC/BrAC ≥0.02 but <0.08, their license is suspended as follows: 1st refusal-**12 mos** (mand); sub refusal (w/n 5 yrs)-2 (mand) to 5 yrs §286-151.5(c) Sanctions. If a person <21 yrs old operates a motor vehicle with a BAC/BrAC ≥0.02 but <0.08, they are guilty of a violation and are subject to the following sanctions: 1st offense: The court must (1) require that the offender attend an alcohol abuse education and counseling program and (2) impose a license suspension as follows: For persons <18 yrs old, a susp for **180 dys** (mand) and, for persons ≥18 yrs old, either a susp for **180 dys** or a susp for **30 dys** (mand) followed by a restricted license for 150 dys for either work-related purposes or for alcohol abuse education and treatment programs. In addition, the court may impose (1) a fine of **$150 to $500** and/or (2) community service of **36 hrs**. 2nd offense (w/n 5 yrs): The court must impose a license suspension for **1 yr** (mand) In addition, the court may impose (1) a fine of **$300 to $1,000** and/or (2) community service of **50 hrs**. 3rd offense (w/n 5 yrs): The court must impose a license revocation for **2 yrs** (mand). In addition, the court may impose (1) a fine of **$300 to $1,000** and/or (2) community service of **100 hrs**. §291-4.3(b)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥0.04 percent by weight (Percent by weight is defined to mean grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of alcohol, a controlled substance or any drug which impairs driving ability or (3) refuse to submit to a chemical test for an alcohol concentration. Note: The CMV "disqualification" provision, based on refusal, applies only to a refusal to submit to a chemical test for alcohol concentration; however, the CMV implied consent provision applies to the testing for both alcohol or controlled substances. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). In addition, a CMV operator who has a BAC/BrAC ≥0.01 must be placed "out-of-service" for 24 hours. §§286-2, 286-231, 286-240, 286-242 & 286-243

Sanctions Following a Conviction for a DWI Offense:
(continued)

Alternative Programs. DWI (alcohol or drug) offenders may be eligible to participate in programs that provide for alternatives to imprisonment. Such programs could include (1) home detention or curfew using monitoring (surveillance), (2) supervised release, graduated release or furlough with structured educational or vocational programs or (3) regimental discipline. §353-10.5
Note: The legislature established these programs as a means of reducing prison overcrowding. §1 of Act 25 of 1995 Special Session **Comment:** These programs could impact the mandatory jail requirements under the DWI (alcohol or drug) laws.
License Suspension/Revocation via Court Order. For any violation of the traffic laws, the court can either suspend or revoke an offender's license. A suspension cannot be >5 yrs. If the license is revoked, the licensing agency cannot restore driving privileges for at least 1 yr. §§286-125 & 286-126
Compensation Fund. A person, who has been convicted of a criminal offense, must pay the following fees into the State Criminal Injuries Compensation Fund: For a felony off-**$100 to $500**; for a misd-**$50**; and, for a petty misd-**$25**. §351-351

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **Yes** 3 types of offs: (1) Death caused by negligent veh operation while DWI (negligent homicide in the first degree) a Cl B felony; (2) death caused by negligent veh operation (negligent homicide in the second degree) a Cl C felony; (3) death caused by simple negligence-(negligent homicide in the third degree) a misd §§706-620, 706-640, 706-660, 706-660.2, 706-663, 707-702.5, 707-703 & 707-704

Sanctions:
Criminal Sanction:
Imprisonment (Term): Death caused by negligent veh operation while DWI (negligent homicide in the 1st degree) a Cl B felony-Not more than **10 yrs**; death caused by negligent veh operation (negligent homicide in the 2nd degree) a Cl C felony-Not more than **5 yrs**; death caused by simple negligence-(negligent homicide in the 3rd degree) a misd-Not more than **1 yr**

Mandatory Minimum Term: The following mandatory imprisonment sanctions apply if the person killed was either 60 years old or older, blind, paraplegic, quadriplegic or eight (8) years old or younger. Negligent homicide in the first degree-3 yrs, 4 mos; negligent homicide in the second degree-1 yr, 8 mos. §§706.620 & 706-660.2

Fine ($ Range): Death caused by negligent veh operation while DWI (negligent homicide in the 1st degree) a Cl B felony-Not more than **$25,000**; death caused by negligent veh operation (negligent homicide in the 2nd degree) a Cl C felony-Not more than **$10,000**; death caused by simple negligence-(negligent homicide in the 3rd degree) a misd-Not more than **$2,000**

Mandatory Minimum Fine: **None**

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Death caused by negligent veh operation while DWI (negligent homicide in the first degree) a Cl B felony-**Rev**[1]; death caused by negligent veh operation (negligent homicide in the second degree) a Cl C felony-**Rev**[1]; death caused by simple negligence-(negligent homicide in the third degree) a misd-**Rev**[1]
Length of Term of Licensing Withdrawal:	Death caused by negligent veh operation while DWI (homicide in the first degree) a Cl B felony-Not less than **1 yr**; death caused by negligent veh operation (homicide in the second degree) a Cl C felony-Not less than **1 yr**; death caused by simple negligence--homicide in the third degree) a misd-Not less than **1 yr**
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr**[1]
Other:	See Compensation Fund on p. 3-128.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense[2]:	See the Special Note Nos. 1, 2 & 3 below.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd** 1st off-**3 con dys**[3] **to 30 dys**; 2nd off (w/n 5 yrs)-**30 dys**[3]; 3rd and sub. off (w/n 5 yrs)-**1 yr**[3] §§291-4.5 & 701-107(3)
Mandatory Minimum Term of Imprisonment:	See Footnote No. 3.
Fine ($ Range):	1st off-**$250**[3] **to $1,000**; 2nd off (w/n 5 yrs)-**$1,000**[3]; 3rd and sub. off (w/n 5 yrs)-**$2,000**[3] §291-4.5 See Compensation Fund on p. 3-128.
Mandatory Minimum Fine:	See Footnote No. 3.

[1]Note: Mandatory rev applies to a conviction of the driver for "manslaughter". §§286-124 & 286-126

[2]The sanctions given also apply to a person who operates a motor vehicle after having their driving privileges revoked under the admin. per se law.

[3]This sanction may not be mandatory. The law is not clear on this point.

Special Note No. 1: The sanctions given apply only to persons who operate a motor vehicle while in a suspended or revoked status, where such suspension or revocation was based on a conviction for driving either while under the influence of alcohol or with an alcohol concentration ≥0.10. I.e., these sanctions do not apply to persons who operate a motor vehicle while in a suspended or revoked status, where such suspension or revocation was based on a conviction for driving while under the influence of a controlled substance. For this last situation, the general sanctions for operating motor vehicle while either suspended or revoked apply; the sanctions for this general offense are a term imprisonment of not more than 1 yr and/or a fine of $250 to $1,000. §286-132 A person is also assessed from 3 to 6 points on their driving record. A license can be suspended from 1 to 6 mos if a person accumulates 12 points. §286-128

Special Note No. 2: It is a misd to operate a CMV following CDL disqualification. The sanctions for this offense are a jail term of not more than 1 yr, a fine of $500 to $1,000 and disqualification for not less than 1 yr and up to life. §§286.235(b), 286-249(a) & 701.107(3)

Special Note No. 3: It is a misd to operate a CMV during a CDL out-of-service order. The sanctions for this offense are a fine of not more than $2,500 and disqualification for not less than 1 yr and up to life with the following specific disqualification periods: 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub off (w/n 10 yrs)-3 yrs (mand) to 5 yrs. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or 15 or more persons: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 yrs (mand) to 5 yrs. §§286.235(b), 286-240(g) & (h), 286-249(b) & 701.107(3)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev**[1] §291-4.5
Length of Term of License Withdrawal Action:	1st off-An additional susp/rev period of **1 yr**; 2nd off (w/n 5 yrs)-An additional susp/rev period of **2 yrs**; 3rd and sub. off (w/n 5 yrs)-**Permanent Revocation** See Footnote No. 2. §291-4.5
Mandatory Term of License Withdrawal Action:	The above suspensions or revocations appear to be mandatory.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Possible** §841-3 Indirect chemical test via the coroner
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Possible**
Vehicle Passengers:	**Possible**
Pedestrian:	**Possible**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[3] (Year Eff: 1986) §§281-1, 281-78 & 281-101.5

[1]See License Suspension/Revocation via Court Order on p. 3-128.
[2]The period of suspension or revocation shall commence upon the person's release from imprisonment. §291-4.5(a)
[3]Notwithstanding the prohibitions contained in §281-78, a university or college student, who is under the legal drinking age, may participate in wine tasting as part of a course of study in food and beverage control, club management or classical food and beverage management offered by the University of Hawaii. §304-55

Other State Laws Related To Alcohol Use: (continued)

Minimum Age (Years) Possession:	**21** Employment situations, medical treatment and religious ceremonies are excluded. §§281-1, 281-78, 281-101.5 and 712-1250.5(2)(a) & (b)
Minimum Age (Years) Consumption:	**None**
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Ono v. Applegate,* 612 P.2d 533 (Hawaii 1980)[1]
Dram Shop Actions-Social Hosts:	**No** *Johnston v. KFC Nat. Management Co.,* 788 P.2d 159 (Hawaii 1990), & *Faulk v. Suzuki Motor Co., Ltd.,* 851 P.2d 332 (HawaiiApp. 1993)
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd**
Term of Imprisonment:	Not more than **6 mos** §§281-78, 281-91 & 281-102
Fine ($ Range):	Not more than **$1,000**[2]
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or Rev**
Length of Term of License Withdrawal:	Not specified in the statute Note: A civil penalty of not more than $2,000 may be assessed in lieu of a license susp or rev. §§281-78, 281-91 & 281-10
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd**[3]
Term of Imprisonment:	Not more than **6 mos**[3]
Fine ($ Range):	Not more than **$1,000**[2&3] §§281-78, 281-91 & 281-102

[1]Under some circumstances, a licensee may be held liable for the actions of an intoxicated minor to whom they have not sold alcoholic beverages. Such is the case if an under age person is allowed to purchase alcoholic beverages where it is "reasonably foreseeable" that the purchaser will give such beverages to another minor who could become intoxicated and cause injury to a third party. *Reyes v. Kuboyama,* 870 P.2d 1281 (Hawaii 1994)

[2]See Compensation Fund on p. 3-128.

[3]Under §712-1250.5, it is a misdemeanor to promote intoxicating liquor to a minor: Jail-not more than 1 yr (§706-663) and/or a fine-not more than $2,000 (§706-640(4)).

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Susp or Rev**

Length of Term License Withdrawal: Not specified in the statute Note: A civil penalty of not more than $2,000 may be assessed in lieu of a license susp or rev. §§281-78, 281-91 & 281-10

Special Note: In Hawaii, alcoholic beverage licensing and enforcement is under the authority of the various county liquor commissions. §281-17

Anti-Happy Hour Laws/Regulations: **Yes** (City & County of Honolulu) Rule 78.5 (regulation)[1]

Note: Under §281-78.5(a), persons licensed to sell alcoholic beverages are prohibited from engaging in practices that promote the excessive consumption of such beverages. To supplement this prohibition, the various county liquor commissions are required, under §281-78.5(b), to promulgate regulations which prohibit specific practices that promote such excessive consumption. **Comment:** Except for the City and County of Honolulu, such regulations may or may not be concerned with prohibiting or limiting the sale of an unlimited quantity of alcoholic beverages at a fixed price.

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No): **Yes**[2] §§291-3.1(a) & 291-3.2(a)

Anti-Consumption Law (Yes/No): **Yes**[2] Driver and passengers §§291-3.1(b), 291-3.2(b) & 291-3.3

[1]This regulation was promulgated by the Liquor Commission of the City and County of Honolulu and applies only to these places.
[2]There is an exception in the case of motor vehicles for hire. §291-3.4

STATE:	**IDAHO**
General Reference:	Idaho Code (General Laws of Idaho Annotated)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §18-8004(1)(a)
Illegal Per Se Law (BAC/BrAC):	≥**0.08**[1&2] §18-8004(1)(a) Persons Under 21 Years Old-≥**0.02 but <0.08**[2] §18-8004(1)(d)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**, (2) Intoxicating Substance (3) Any Narcotic Drug, (4) a Combination of Any Drug and Alcohol §§18-8004(1)(a) & 18-8004(5)
Other:	For Commercial Motor Vehicle Operators, see below. See the Special Note below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[3]
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §18-8002(1)
Refusal to Submit Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *State v. Bock,* 328 P.2d 1065 (1958)
Other Information:	Under §18-8002(6)(b), a law enforcement officer may order a "qualified person" to withdraw blood from a driver for evidential purposes in cases where there is probable cause to believe that such driver has committed either a DWI aggravated or homicide offense. **Comment:** This provision appears to allow law enforcement officers to obtain a blood sample via force.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §§18-8002(1) & 18-8004
Urine:	**Yes** §§18-8002(1) & 18-8004
Other:	**None**

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of 0.08 or more or (2) a urine alcohol concentration of 0.08 or more.

[2]Standards: Grams of alc. per 100 cubic centimeters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §18-8004(4)

[3]The police need only "reasonable grounds" of a DWI off before the implied consent law is applicable. §18-8002(1) However, §18-8002(4)(b) appears to indicate that "probable cause" is needed.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/Alcohol Concentration in a "Bodily Substance" ≥0.04 (For standards, see Footnote No. 2 above.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). A person, who operates a CMV with an alcohol concentration ≥0.04 but <0.08 or while under the influence of alcohol/drugs, commits a DWI offense and is subject to same criminal sanctions as other DWI offenders. In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§49-104(9), 49-105(6), 49-123, 49-335 (Reference is made to 49 CFR part 383.), 18-8002(3)(a), 18-8004(1)(b), (1)(c) & (6), 18-8004(4) and 18-8005(2), (3) & (4)

Special Note: Under §37-2732C, it is misdemeanor to be under the influence of a controlled substance on either a public roadway, a public conveyance, public property or private property. See the cited section for details.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** (Alcohol Evaluation Required) §§18-8004A(1)(d), (2)(d) & (3)(e) and 18-8005(9)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**No**
Administrative Licensing Action (Susp/Rev):	1st Refusal-**180 dys susp** (mand); 2nd Refusal (w/n 5 yrs)-**1 yr susp** (mand) §18-8002(3)(c), (4)(b) & (4)(c)
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note and Double Jeopardy below.
Imprisonment:	1st off Misd-Not more than **6 mos**; 1st off with BAC/BrAC ≥0.20-Misd-Not more than **1 yr**; 2nd off (w/n 5 yrs) Misd-**10 dys to 1 yr**; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs Felony-Not more than **5 yrs**; 3rd & sub off (w/n 5 yrs) or 4th or sub off (w/n 10 yrs) Felony-Not more than **5 years** Aggravated DWI off where there is bodily harm or disfigurement Felony-Not more than **5 years** §§18-8004C(1)(a) & (2)(a), 18-8005 and 18-8006 Persons Under 21 Years Old (0.02 Offense)-1st off Misd-**None**; 2nd off Misd-**None**; 3rd and sub off Misd-Not more than **6 mos** §18-8004A(3)(a)

Special Note: If a person is convicted of a DWI offense and they have had within the past 10 yrs a prior conviction for either (1) a DWI felony offense, (2) Aggravated DWI or (3) DWI Vehicle Homicide, they are guilty of a felony. The sanctions for this offense are as follows: Jail-not more than 5 yrs; fine-not more than $5,000; and license suspension from 1 to 5 yrs after release from imprisonment (a 1 yr license suspension after release from imprisonment is mandatory). §18-8005(5) & (7)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Talavera,* 905 P.2d 633 (Idaho 1995), & *State v. Reichenberg,* 915 P.2d 14 (Idaho 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:	1st off-**None**; 1st off with BAC/BrAC ≥0.20 -**10 dys** (must serve 48 con hrs)[1]; 2nd off (w/n 5 yrs)-**10 dys** (must serve 48 con hrs)[1&2]; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-**30 dys**[1]; 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs)-**30 dys** (must serve 48 con hrs)[1] Aggravated DWI off where there is bodily harm/disfigurement-**30 dys** (must serve 48 con hrs)[1] §§18-8004C, 18-8005 & 18-8006 Persons Under 21 Years Old (0.02 Offense)-**None**
Fine: Amount ($ Range):	1st off-Not more than **$1,000**[3]; 1st off with BAC/BrAC ≥0.20-Not more than **$2,000**[3]; 2nd off (w/n 5 yrs)-Not more than **$2,000**[3]; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-Not more than **$5,000**[3]; 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs)-Not more than **$5,000**[3] Aggravated DWI off where there is bodily harm/disfigurement-Not more than **$5,000**[3] §§18-8004C(1)(b) & (2)(b), 18-8005 and 18-8006 See Footnote No. 4. Persons Under 21 Years Old (0.02 Offense)-1st off-Not more than **$1,000**; 2nd off-**$500 to $2,000**; 3rd and sub off-**$1,000 to $2,000** §18-8004A(1)(a), (2)(a) & (3)(b)
Mandatory Minimum Fine ($):	Regular DWI offenses and Aggravated DWI-**None** Persons Under 21 Years Old (0.02 Offense)-1st off-**None**; 2nd off-**$500**[5]; 3rd and sub off-**$1,000**[5]
Other Penalties: Community Service:	**Possible** Although not specifically authorized by statute, community service could be a condition of probation. §19-2601
Restitution (eg Victim's Fund)	**Yes** (1) Under §19-5304, a person, who has been convicted of any criminal offense, may be ordered to pay restitution to a victim. (2) Aggravated DWI off-paid by the defendant to a victim §18-8006(1)(e) And, (3) there is also a victims' compensation fund. §72-1001 et seq. See Footnote No. 3.

[1]**Historical Note:** Under Art. 5, §13 of the State's constitution, the legislature may provide for mandatory minimum sanctions. This constitutional provision indirectly abrogated the Idaho Supreme Court's decision in *State v. McCoy,* 486 P.2d 247 (Idaho 1971), that had voided a statute requiring mandatory sanctions.
[2]The court may assign an offender to a work detail program w/n the custody of the count sheriff during the period of incarceration. §18-8005(4)(a)
[3]A defendant is also assessed a special fine of $10 which is paid into a crime victims' compensation account. §72-1025
[4]Under §18-8010, a surcharge of $15 is added to all fines for the purpose of purchasing ignition interlock and electronic monitoring devices.
[5]**Comment:** The law is not clear as to whether this fine sanction is mandatory.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	Under §18-8008, if any part of a jail sentence or fine is suspended, the court may impose, in addition to any other penalty, the following requirements. (1) The defendant may only operate a motor vehicle equipped with an **"ignition interlock"** device; an imprint/notice shall be made on/attached to the defendant's license stating that driving privileges are granted only for use on motor vehicles equipped with this device; the court can require use of this device for a period of time not in excess of the defendant's probation period. And, (2) the court may require the defendant to use an **"electronic monitoring"** device to record their movements while they are on probation to insure that they comply with either curfew hours, driving privilege restrictions or home confinement requirements.
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	**Important.** See Double Jeopardy on p. 3-134 and the Special Note below.
Administrative Per Se Law:	**Yes** (1) ≥**0.08** (BAC/BrAC/UrAC See Footnote No. 2 on p. 3-133.) or (2) under the influence of either alcohol, drugs or an intoxicating substance 1st Violation-**Susp 90 dys** (30 dys mand followed by 60 dys restricted driving privileges); 2nd or subsequent violation (w/n 5 yrs)-**Susp 1 yr** (mand) §18-8002A
Other:	Under §49-326(a)(1) & (5), a person's license may be susp for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., veh. homicide)[1]. Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.
Post DWI Conviction Licensing Action:	See the Special Notes below and on p. 3-134.
Type of Licensing Action (Susp/Rev):	1st off-**Susp**[2]; 1st off with BAC/BrAC ≥0.20-**Susp**; 2nd off-**Susp**[2]; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-**Susp**; 3rd & sub off-**Susp**[2] Aggravated DWI off-**Susp** §§18-4004C(1)(e) & (2)(e), 18-8005 and 18-8006 Persons Under 21 Years Old (0.02 Offense)-1st off-**Susp**; 2nd off-**Susp**; 3rd and sub off-**Susp** §18-8004A(1)(b), (2)(b) & (3)(d)

[1]These provisions do not apply to DWI offense convictions since such convictions result in license suspension not revocation.
[2]If the offender is a minor (a person under 18 years old), their license is suspended or denied for either an additional period of 1 yr or until the person reaches 21 which ever period is longer following the end of any regular period of suspension or revocation. This licensing action appears to be mandatory. §§18-8005(11) & 32-101

Special Note: If an offender is subject to licensing action for both an administrative per se law and a criminal drunk driving offense conviction, the license suspension periods are to run concurrently unless the court order to the contrary. §18-8002A(7)(e)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**30 to 150 dys**; 1st off with BAC/BrAC ≥0.20-**1 yr** after release from confinement; 2nd off-**1 yr** after release from confinement; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-**1 to 5 yrs** after release from confinement; 3rd & sub off-**1 to 5 yrs** after release from confinement Aggravated DWI off-**1 to 5 yrs** after release from confinement §§18-4004C(1)(e) & (2)(e), 18-8005 and 18-8006 Persons Under 21 Years Old (0.02 Offense)-1st off-**1 yr**; 2nd off-Not more than **2 yrs**; 3rd and sub off-**1 yr** or until the person reaches 21 whichever is greater §18-8004A(1)(b), (2)(b) & (3)(d)
Mandatory Minimum Term of Withdrawal:	1st off-**30 dys**[1]; 1st off with BAC/BrAC ≥0.20-**1 yr** after release from confinement; 2nd off-**1 yr** after release from confinement; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-**1** after release from confinement; 3rd & sub off-**1 year** after release from confinement Aggravated DWI off-**1 year** after release from confinement §§18-4004C(1)(e) & (2)(e), 18-8005 and 18-8006 Persons Under 21 Years Old (0.02 Offense)-1st off-**90 dys** (restricted driving privileges may be granted after this mand period); 2nd off-**180 dys**; 3rd and sub. off-**1 yr** §18-8004A(1)(b), (2)(b) & (3)(d)
Other:	
Rehabilitation:	
Alcohol Education:	
Alcohol Treatment:	A DWI offender may be required to participate in an alcohol treatment program by the court. §18-8005(12)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**Surcharge.** A mandatory **$15** surcharge is added to all fines. Funds collected from this surcharge are deposited into a special account which is used either (1) to purchase ignition interlock or electronic monitoring devices or (2) for misdemeanor drunk driving offense probation programs. §18-8010 **Child Endangerment.** It is an offense for a person > 18 years old to operate a motor vehicle in violation of the drunk driving laws while transporting a "minor." If there is no injury or death associated with this offense, it is a misdemeanor with a jail term

[1]After the 30 dy period, the license must be suspended by the court for at least 60 additional dys but not more than 150 dys. However, the defendant may be issued a restricted license for employment/family needs during this 60 to 150 dy period. §18-8005(1)(d)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Child Endangerment. (continued) of not more than 6 mos and/or a fine of not more than $300. However, if the child is either injured or killed, it is a felony with imprisonment of 1 to 10 yrs (unless a more serve penalty is authorized by law.) §§18-113 & 18-1501(3)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes There are three (3) types of veh manslaughter offs. Death as a result of either (1) an unlawful act not amounting to a felony where gross negligence is involved (Felony), (2) a DWI off (Felony) or (3) death as a result of an unlawful act not amounting to a felony where there is no gross negligence (Misd). §§18-111, 18-4006(3) & 20-201 et seq.

Sanctions:
Criminal Sanction:
Imprisonment (Term):

Death as a result of either (1) gross negligence or (2) a DWI off-Not more than **10 years**; (3) death as a result of an unlawful act not amounting to gross negligence - Not more than **1 year** §18-4007(3)

Mandatory Minimum Term:

None

Fine ($ Range):

Death as a result of either (1) gross negligence or (2) a DWI off-Not more than **$10,000**; (3) death as a result of an unlawful act not amounting to gross negligence - Not more than **$2,000** §18-4007(3)

Mandatory Minimum Fine:

None

Administrative Licensing Action:
Licensing Authorized and Type of Action:

Death as a result of either (1) gross negligence or (2) a DWI offs-**Rev** §49-325(1)(a); (3) death as a result of an unlawful act not amounting to gross negligence - **Rev** §49-325(1)(a)

Length of Term of Licensing Withdrawal:

Death as a result of either (1) gross negligence or (2) a DWI offs-Not less than **1 yr** §49-326(5) (3) death as a result of an unlawful act not amounting to gross negligence - Not less than **1 yr** §49-326(5)

Court Suspension. In addition, an offender's license "may be suspended for a time determined by the court." §18-4007(3)(a)

Mandatory Action--Minimum Length of License Withdrawal:

Death as a result of either (1) gross negligence or (2) a DWI offs-**1 yr**; (2) Death as a result of an unlawful act not amounting to gross negligence-**1 yr** §§49-325(a) & 49-326(5)

Other:

Note: A temporary restricted license cannot be issued following revs based on veh manslaughter. §49-325(2)

Death of a Parent-If a parent of a minor was fatally injured, the offender may be required to pay child support until the minor reaches 18 yrs old. §18-4007(3)(c)

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. 1 and the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	1st off Misd-Not less than **2 dys to 6 mos**; 2nd off Misd (w/n 5 years)-**20 dys to 1 yr**; 3rd and subsequent offs Misd (w/n 5 years)-Not more than **1 yrs** §18-8001
Mandatory Minimum Term of Imprisonment:	1st off Misd-**2 dys**[2]; 2nd off Misd (w/n 5 years)-**20 dys**[2]; 3rd and subsequent offs Misd (w/n 5 years)-**30 dys** Note: A defendant may be assigned to a work release program within the custody of the county sheriff. However, they are not eligible for community service in lieu of imprisonment. §18-8001(3)(a), (4)(a), (5)(a) & (8)
Fine ($ Range):	1st off Misd-Not more than **$500**; 2nd off Misd (w/n 5 years)-Not more than **$1,000**; 3rd and subsequent offs Misd (w/n 5 years)-Not more than **$3,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	1st off-**Susp**; 2nd off (w/n 5 years)-**Susp**; 3rd and subsequent offs (w/n 5 years)-**Susp** §18-8001
Length of Term of License Withdrawal Action:	1st off (Misd)-License susp for an additional **6 mos**; 2nd Off (Misd) (w/n 5 yrs)-License susp for an additional **1 yr**; 3rd and subsequent offs (Misd) (w/n 5 yrs)-License suspended for an additional **2 yrs** §18-8001
Mandatory Term of License Withdrawal Action:	1st off-**None**[3]; 2nd off (w/n 5 yrs)-An additional susp for **30 dys** mand[4]; 3rd and subsequent offs (w/n 5 yrs)-An additional susp for **90 dys** is mand.[4] §18-8001(3)(c), (4)(c) & (5)(c)

[1]If a person is convicted of an alcohol driving off and such person had no driving privileges at the time of arrest, the penalties imposed under §18-8001 are in addition to any penalties imposed for an alcohol driving off conviction. §18-8001(7)
[2]The court may assign an offender to a work detail program w/n the custody of the count sheriff during the period of incarceration. §18-8001(1)(a) & (4)(a)
[3]Restricted licenses available for employment or education reasons or family health needs. §18-8001(3)(c)
[4]After the mand suspension period, a person is eligible for a restricted license for employment or education or family health needs. §18-8001(4)(c) & (5)(c)

Special Note: I. The law (§18-8001) provides that the sanctions given also apply to persons who operate a CMV during a CDL disqualification. II. **Comment:** Idaho law does not appear to make it a criminal offense to operate a CMV following a CDL out-of-service order. Notwithstanding, the law does provide for the following disqualification periods against persons "convicted of an out-of-service order": 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 (mand) to 5 yrs; 3rd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or 16 or more persons: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. §49-335(8)

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**Yes** §49-1314
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1987) §§23-312, 23-929, 23-1023 & 23-1334
Minimum Age (Years) Possession:	**21** §23-949 There is an employment exemption for persons who are at least 19 years old. §§23-1013 & 23-1334
Minimum Age (Years) Consumption:	**21** §23-949

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** §23-808 Note: This law limits liability to situations where the patron/guest was either (1) obviously intoxicated or (2) intoxicated and under the legal drinking age.

Other State Laws Related To Alcohol Use: (continued)

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	Note: Case law (e.g., *Alegria v. Payonk,* 619 P.2d 135 (1980)) may have been abrogated via legislation. §23-808
Dram Shop Actions-Social Hosts:	**Yes** §23-808 See the Note above.
Other:	**No**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	State liquor dispensary employees (pkg. sales)-**Misd** §§23-312 & 23-601; State authorized vendors (State liquor stores)/distributors (pkg. sales)-**Misd** §§18-113 & 23-605; Retail liquor by the drink[1]-**Misd** §§23-929 & 23-935; Retail sale of beer (not more than 6% alc. by weight)-**no sanctions**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**no sanctions**[2]
Term of Imprisonment:	State liquor dispensary employees (pkg. sales)-**3 mos to 1 yr**; State authorized vendors (State liquor stores)/distributors (pkg. sales)-**not more than 6 mos**; Retail liquor by the drink[1]-**30 dys to 6 mos**; Retail sale of beer (not more than 6% alc. by weight)-**none**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**none**[2]
Fine ($ Range):	State liquor dispensary employees (pkg. sales)-**$300 to $1,000**; State authorized alc. vendors (State liquor stores)/distributors (pkg. sales)-**not more than $300**; Retail liquor by the drink[1]-**$100 to $300**; Retail sale of beer (not more than 6% alc. by weight)-**none**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**none**[2]
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Retail liquor by the drink-**Susp or Rev**; Retail sale of beer (not more than 6% alc. by weight)-**Susp or Rev**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**Susp or Rev** §§23-933, 23-1037 & 23-1331

[1]These retailers may also sell wine (of not more than 14% alc. by volume) by the drink. §23-1332

[2]Probably covered by the provisions of §23-605 which generally prohibits persons from selling "alcoholic liquor" to intoxicated persons-Misd-jail: not more than 6 mos; fine: not more than $300. §18-113

Other State Laws Related To Alcohol Use: (continued)

Length of Term of License Withdrawal:	For revs for all licensees, no stated rev period in the law. For susps for liquor by the drink and retail sale of wine licensees, no stated susp period in the law. For retail sale of beer licensees, susp not more than 6 mos. See the Special Note below.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	State alc. liquor dispensary employees (pkg. sales)-**Misd** §§23-312 & 23-601; State authorized alc. vendors/distributors (pkg. sales)-1st off. **Misd**; Sub. off.-**Felony** §§18-112, 18-113 & 23-603[2]; Retail alc. liquor by the drink[1&2] -**Misd** §§23-929 & 23-935; Retail sale of beer (not more than 4% alc. by volume)-**Misd** §§18-113, 23-1013 & 23-1020; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**Misd**[1] §§18-113, 23-1334(b) & 23-1335
Term of Imprisonment:	State liquor dispensary employees (pkg. sales)-**3 mos-1 yr**; State authorized vendors (State liquor stores)/distributors (pkg. sales)-1st off.-**not more than 6 mos**, Sub. off.-**not more than 5 yrs**[2]; Retail liquor by the drink[1&2]-**30 dys to 6 mos**; Retail sale of beer (not more than 6% alc. by weight)-**not more than 6 mos**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**not more than 6 mos**[2]
Fine ($ Range):	State liquor dispensary employees (pkg. sales)-**$300 to $1,000**; State authorized vendors (State liquor stores)/distributors (pkg. sales)-1st off.-**not more than $300**, Sub. off.-**not more than $5,000**[2]; Retail liquor by the drink[1&2]-**$100 to $300**; Retail sale of beer (not more than 6% alc. by weight)-**not more than $300**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**not more than $300**[2]

[1]May also sell wine (of not more than 14% alc. by volume) by the drink. §23-1332

[2]Sec. 23-603 appears to apply generally to any person selling "alcoholic liquor" to a minor. 1st off-Misd.-jail: not more than 6 mos; fine: not more than $300 (§18-113); 2nd and sub. off-Felony-prison: not more than 5 yrs; fine: not more than $5,000 (§18-112)

Special Note: In cases where a suspension has been authorized, the licensee may agree to pay a penalty of not more than $5,000 in lieu of the suspension. §§23-933, 23-1037 & 23-1331

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Retail liquor by the drink-**Susp or Rev**; Retail sale of beer (not more than 6% alc. by weight)-**Susp or Rev**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**Susp or Rev** §§23-933, 23-1037 & 23-1331
Length of Term License Withdrawal:	For revs for all licensees, no stated rev period in the law. For susps for liquor by the drink and retail sale of wine licensees, no stated susp period in the law. For retail sale of beer licensees, susp not more than 6 mos. See the Special Note on p. 3-142.
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes**[1] §§23-505 & 23-1333
Anti-Consumption Law (Yes/No):	**Yes**[1] §23-505

[1]The law has two provisions. The first, prohibits a driver or passenger from either breaking open or consuming alcoholic liquor (but not beer) while such beverage is being transported. The second provision prohibits a driver from drinking or possessing an open container of any type of alcoholic beverage while in "actual physical control of a motor vehicle". §§23-505 & 23-105 Note: A person is in "actual physical control" of a motor vehicle if they are seated in the driver's position either while the engine is running or while the vehicle is moving. §18-8004(6)

STATE:	**ILLINOIS**
General Reference:	West's Smith-Hurd Illinois Compiled Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol 625 ILCS 5/11-501(a)(2)
Illegal Per Se Law (BAC/BrAC):	≥**0.08**[1&2] or **Any Amount**[3] **of Cannabis, Controlled Substance or Intoxicating Compound (Under the Use of Intoxicating Compounds Act**[4]**)** or 625 ILCS 5/11-501(a)(1) & (6)[5]
Presumption (BAC):	≥**0.08** 625 ILCS 5/11-501.2(b)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** (2) an Intoxicating Compound or (3) a Combination of Any Drug, Intoxicating Compound[3] and Alcohol 625 ILCS 5/11-501(a)(3), (4) & (5)
Other:	For Commercial Motor Vehicle Operators, see p. 3-148. See the Special Note below concerning snowmobiles and golf carts.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes**[6] 625 ILCS 5/11-501.5
Implied Consent Law:	Important. See Injury/Death Related Implied Consent Law on p. 3-147 and School Bus Operators on p. 3-151.
Arrest Required (Yes/No):	**Yes** 625 ILCS 5/11-501.1
Implied Consent Law Applies to Drugs (Yes/No):	**Yes**[7] 625 ILCS 5/11-501.1(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) 625 ILCS 5/11-501.2(c)(1) & 11-501.6(f), *People v. Thomas,* 558 N.E.2d 656 (Ill.App. 2 Dist. 1990), and *People v. Garriott,* 625 N.E.2d 780 (Ill.App. 4 Dist. 1993)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more. 625 ILCS 5/11-501.2(a)(5)
[2]Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. 625 ILCS 5/11-501.2(a)(5)
[3]As found in the breath, blood or urine "resulting from unlawful use or consumption." 625 ILCS 5/11-501(a)(6)
[4]For a list of "intoxicating compounds", see 720 ILCS 690/1.
[5]The provision of the drunk driving law, that makes it an offense to operate a motor vehicle with any amount of cannabis or controlled substance in the body, was held to be constitutional under both the State and Federal constitutions. *People v. Fate,* 636 N.E.2d 549 (Ill. 1994), & *People v. Gassman,* 622 N.E.2d 845 (Ill.App. 2 Dist. 1993)
[6]Before a PBT can be administered, a law enforcement officer must have "reasonable suspicion" to believe that the driver has violated the DWI law. The test is given prior to an actual DWI arrest for the purpose of assisting the officer in determining whether to require a chemical (evidentiary) test under the implied consent law. The law allows a defendant to introduce PBT test results into evidence at a DWI trail. The State does not have this same right. *State v. Rose,* 643 N.E.2d 865 (Ill.App. 4 Dist. 1994)
[7]**Persons Under 21 Years Old.** Under a separate implied consent law, a law enforcement officer may request that a person, who is under 21 years old, submit to a chemical test of either their blood, breath or urine for alcohol concentration if there is "probably cause to believe" that such person has consumed any amount of alcohol. An actual DWI arrest is not required. 625 ILCS 5/11-501.8(a)
[7]In addition to statutory law, case law provides that for the purpose of determining blood alcohol concentration, a blood sample may be taken by force for a DWI offense (injury or non injury related) as long as the police have "probable cause" of such offense. *People v. Byrd,* 574 N.E.2d 1269 (Ill.App. 4 Dist. 1991), & *People v. Yant,* 570 N.E.2d 3 (Ill.App. 2 Dist. 1991)

Special Note: I. The State of Illinois has a separate provisions of law concerning the operation of snowmobiles by persons who are either (1) under the influence of alcohol or drugs or (2) have an alcohol concentration ≥0.10 (not 0.08) or any amount of a controlled substance or cannabis in their system. The details of these provisions are not reported in this Digest. For further information, see 625 ILCS 40/5-7 et seq. & 625 ILCS 10-1 et seq. II. In addition, all of the State's drunk driving law provisions (i.e., implied consent, admin. per se, et al.) and the "open container" law apply to the operation of golf carts on roadways. 625 ILCS 5/11-1428(f)

Chemical Breath Tests for Alcohol Concentration:
(continued)

Other Information:	If there is probable cause of "driving while under the influence" related to a death or injury to another person, the driver must submit to chemical test of their blood, breath or urine for alcohol concentration or drug content.[7] 625 ILCS 5/11-501.2(c)(2)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** 625 ILCS 5/11-501.1 & 5/11-501.8
Urine:	**Yes** 625 ILCS 5/11-501.1 & 5/11-501.8
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**[1]
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol or Drug Evaluation (screening required) 625 ILCS 5/11-501(e)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	See School Bus Operators on p. 3-151.
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal-Susp for **6 mos** Note: A Judicial Driving Permit is available. See Footnote No. 2 (under Admin. per se) on p. 3-150 for details. Also, restricted driving privileges are available under 625 ILCS 5/6-206(c)(3); Subsequent refusals[2] (w/n 5 yrs)-Susp for **3 yrs** (2 yrs mandatory) See Footnote No. 5 on p. 3-150. 625 ILCS 5/6-206(c)(3), 6-206.1, 6-208.1 & 11-501.1 **Important.** See Persons Under 21 Years Old below.

[1]Note: A defendant cannot obtain deferred judgement and be placed on supervision if within the past 10 years they have either (1) been convicted of DWI, (2) pleaded guilty to or stipulated facts supporting the conviction of a DWI off charge or (3) received supervision for a prior DWI off. 730 ICLS 5/5-6-l(c) & (d))

[2]Or a refusal where the person has had a previous DWI offense conviction or admin. per se violation (w/n 5 yrs). 625 ILCS 5/11-500 **Persons Under 21 Years Old.** See Footnote No. 6 on p. 3-145. Persons under 21 years old, who refuse to submit to a chemical test for alcohol concentration under 625 ILCS 5/11-501.8(a), are subject to the following sanctions: 1st refusal-**Susp 6 mos** (30 dys mand Restricted driving privileges may be issued after 30 dys.); Sub refusal (Or a refusal where the person under 21 years old has had a previous suspension under 625 ILCS 5/11-501.8 for driving with a BAC/BrAC >0.00 but <0.08.)-**Susp 2 yrs** (6 mos mand Restircted driving privileges may be issued after 6 mos.) 625 ILCS 5/6-208.2 See Footnote No. 8 on p. 3-150. Important. After a hearing, the State Secretary of State has the authority to "rescind" this licensing action. 625 ILCS 5/6-206(c)(3) & 6-208.2(a)

Sanctions for Refusal to Submit to a Chemical Test: (continued)

Other:

Injury/Death Related Implied Consent Law. Under another separate and independent implied consent law, 625 ILCS 5/11-501.6 (See the Historical Note below), if a law enforcement officer has arrested a driver under any provision of the vehicle code and the driver has been involved in an accident that has resulted in either an injury or a fatality, the officer may request that the person submit to a chemical test of their blood, breath or urine for the purpose determining either the alcohol or drug content in such person's blood. Note: This law, like its predecessor, does not provide for individualized suspicion of impairment. If a driver refuses to submit to such a test, their driving privileges are suspended as follows: 1st Refusal-**6 mos**; a refusal where the driver has had a previous license suspension for either (1) a DWI offense conviction or (2) a refusal/admin. per se action under 625 ILCS 5/11-501.1-**2 yrs** These suspensions, however, are not mandatory. If a driver requests a hearing, the State can modify the suspension order or issue a restricted license for employment, educational or medical purposes. 625 ILCS 5/6-208.1, 11-500 and 11-501.6(a), (c) & (e) Important. A person subject to this implied consent law is still subject to the provisions of 625 ILCS 5/11-501.1. I.e., the driver must comply with both implied consent laws. Note: This revised statute (625 ILCS 5/11-501.6) was held not to violate the unreasonable search and seizure provisions of either the Federal or State constitutions. *Fink v. Ryan,* 673 N.E.2d 281 (Ill. 1996)

Sanctions Following a Conviction for a DWI Offense:

See Double Jeopardy on p. 3-149.

Criminal Sanctions:

See the Special Note below and Footnote No. 2 on p. 3-153.

Imprisonment:

1st & 2nd offs (Class A misd)-Less than **1 yr**; 3rd & subsequent offs[1] (Class 4 felony)-**1 to 3 yrs** 625 ILCS 5/11-501 and 730 ILCS 5/5-8-1(a)(7) & 5-8-3(a)(1)

[1]This offense is defined as "Aggravated Driving Under the Influence of Alcohol or Drugs or a Combination of Both". 625 ILCS 5/11-501(d)

Special Note: Either (1) driving a school bus while DWI while the bus is occupied by school children or (2) causing a DWI related accident which results in either great bodily harm or permanent disability or disfigurement is a Cl 4 Felony; imprisonment from 1 to 3 yrs and/or a fine of not more than $10,000. As a condition of probation or conditional discharge an offender must serve either 48 con. hrs. in jail or 100 hrs of community service. Restitution may be required. 730 ICLS 5/5-8-1(a)(7), 5-9-1(a)(1) and 625 ILCS 5/11-501(a), (d)(2) & (d)(3) These offense are defined as "Aggravated Driving Under the Influence of Alcohol or Drugs or a Combination of Both". 625 ILCS 5/11-501(d)

Historical Note: In 1993, 625 ILCS 5/11-501.6 was amended to make the law constitutional and to provide for additional administrative bases for suspending a driver's license for drunk driving activities. As originally written, a law enforcement officer could request that a person, via "implied consent", submit to a chemical test of their blood, breath or urine for alcohol or drug content based only on "probable cause" that the person was responsible for an accident that resulted in either an injury or a death. There was neither a requirement that there be "probable cause" of an offense (e.g., DWI) nor a need for individualized suspicion of impairment. Because the statute provided for no probable cause of an offense, the Illinois Supreme Court declared 625 ILCS 5/11-501.6 unconstitutional under both the State and Federal constitutions on unreasonable seizure grounds. *King v. Ryan, Secretary of State,* 607 N.E.2d 154 (Ill. 1992)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:	2nd off (w/n 5 yrs)-**48 cons hrs**; 3rd & subsequent off (w/n 5 yrs)-**48 cons hrs** (if probation or conditional discharge is granted) 625 ILCS 5/11-501(c), (d) & (h) and 730 ICLS 5/5-5-3(c)(3) & 5-6-1(d) See Community Service below. **Child Endangerment.** Jail sanctions are **enhanced** as follows if the driver was transporting a person <16 years old: 1st off-**2 dys**; 2nd off-**10 dys**; 3rd off-**30 dys**; 4th or sub off-**90 dys**. These sanctions are in addition to any fine or community service for child endangerment. 625 ILCS 5/11-501(c-3)
Fine:	See the Special Note on p. 3-147.
Amount ($ Range):	1st & 2nd offs-Not more than **$2,500**; 3rd & subsequent offs[1]-Not more than **$25,000** 730 ICLS 5/5-9-1(a)(1) & (2)
Mandatory Minimum Fine ($):	**Child Endangerment.** For a 1st or 2nd off (w/n 5 yrs), a **$500** fine is mand if the at the time of the offense the driver was transporting a person <16 years old. 625 ILCS 5/11-501(c)
Other Penalties:	
Community Service:	I. 2nd off (w/n 5 yrs)-A minimum of **100 hrs**[1] (Alternative to the term of 48 cons hrs of mandatory imprisonment) 625 ILCS 5/11-501(c) & (d) and 730 ICLS 5/5-5-3(c)(3) II. For a 3rd or sub. off where the offender has been granted either probation or conditional discharge, they must be sentenced to serve a minimum (mand) term of either **30 dys** of community service or 48 con hrs of imprisonment. 625 ILCS 5/11-501(h) III. **Child Endangerment.** If the defendant was transporting a person <16 yrs old, they are subject to the following mand. periods of community service: 1st off-**5 dys**; 2nd off (w/n 5 yrs)-**10 dys**. 625 ILCS 5/11-501(c)
Restitution (eg Victim's Fund)	**Yes** For all offs Paid directly by a defendant to a victim. 730 ICLS 5/5-5-3(b)(7), 5-5-6 & 5-6-3.1(c)(9) There is also a victims' compensation fund. 740 ILCS 45/1 et seq.
Other:	**Ignition Interlock.** The State Secretary of State may grant relief (from a licensing action) to 2nd or subsequent offenders by allowing them to operate motor vehicles that are equipped with "ignition interlock" devices. 625 ILCS 5/6-205(h) & 5/11-501(i)

[1]**Comment:** There is a conflict in the law. For the same offense, 730 ILCS 5/5-5-3(c)(3) provides for 10 dys of community service (instead of 100 hrs) in lieu of jail.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 12 mos (12 mos mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) have any amount of cannabis or a controlled substance in their blood, breath or urine resulting from the unlawful use of the substance, (3) are under the influence of alcohol or drugs or (4) refuse to submit to a chemical test or tests for alcohol or drug concentrations For either (1) a subsequent violation or (2) a combination of two violations of any of the above listed items, the "disqualification" is for life (10 yrs mand); however, there is a mandatory lifetime disqualification if, after the driver's CDL has been reinstated after the 10 yr mandatory period, they commit another violation as noted above. In addition, a CMV operator who has any amount of alcohol or other drug(s) in their system must be placed "out-of-service" for 24 hours. 625 ILCS 5/1-115.3, 6-500, 6-514, 6-515 & 6-517

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)

Visitation Program. DWI offenders, who are under 21 years old, may be ordered by the court to participate in a special visitation program. An offender may be required to visit either (1) a rehabilitation facility that cares for DWI victims, (2) a facility that cares for persons who are terminally ill from alcoholism, or (3) a morgue to observe persons who have been killed as a result of DWI related accidents. 625 ILCS 5/11-501.7
Additional Fees. I. A fee of up to **$30** may be assessed against DWI offenders for court costs. 55 ILCS 5/5-1101(a) II. 2nd or sub. DWI offenders must be assessed **$100** fee which is used to finance DWI education programs. 55 ILCS 5/5-1101(d)
Surcharge. Every offender is assessed a surcharge of $4 for every $40 (or fraction thereof) of a fine imposed. 730 ICLS 5/5-9-1(c) & 625 ILCS 5/16-104a
Special Restitution. A court may order a DWI offender to pay restitution to the Illinois Secretary of State for any costs incurred by that official's office in obtaining evidence associated with the DWI offense. 625 ILCS 5/2-115
Court Costs (Fees). I. For counties with a population < 180,000: DWI/Misd-$25; felony-$40 705 ILCS 105/27.1(c) II. For counties with a population > 180,000 but < 3,000,000: Misd-$50; felony-$80 705 ILCS 105/27.1a(w) & 27.2(w) III. For counties with a population > 3,000,000: Misd-$75; felony-$125 705 ILCS 105/27.2a(w)
EMS Cost. A DWI offender is liable for the cost of any appropriate emergency response. Such cost shall not exceed **$500** per public agency. 625 ILCS 5/11-501(f) & 730 ILCS 5/5-5-3
Trauma Center Fund. A convicted drunk driving law offender must pay a fee of **$25**. This fee is deposited into the Trauma Center Fund and is used to pay for hospital trauma care. 705 ILCS 105/27.6(b) & 730 ILCS 5/5-9-1(c-5)
Crime Laboratory Costs. A convicted drunk driving law offender must be assessed a fee of **$150** to cover the cost of any chemical analysis that was performed on their blood or urine. 730 ILCS 5/5-9-1.9
Administrative Costs (Fee). A person, who either has been convicted of or has had their license suspended for a drunk driving offense, is assessed a **$25** fee to defray administrative costs. 730 ILCS 5/5-9-1(c-5)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *People v. Dvorak,* 658 N.E.2d 869 (Ill.App. 2 Dist. 1995), *People v. Fasbinder,* 663 N.E.2d 1052 (Ill.App. 4 Dist. 1996), *People v. Eck,* 664 N.E.2d 1147 (Ill.App. 5 Dist. 1996), & *People v. Lopeman,* 665 N.E.2d 881 (Ill.App. 3 Dist. 1996) Note: The Illinois Supreme Court has held that a person is not subjected to double jeopardy if they are prosecuted for a drunk driving offense following a licensing action for a refusal to submit to a chemical test under the impled consent law. *People v. Lavariega,* 676 N.E.2d 643 (Ill. 1997)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Important. See the Special Administrative Per Se Law below and School Bus Operators on p. 3-151.
See Double Jeopardy on p. 3-149 and the Special Note below.
Yes ≥0.08 (BAC/BrAC See Footnote No. 2 on p. 3-145.) or **Any Amount**[1] **of Cannabis, Controlled Substance or Intoxicating Compound** 1st action-**3 mos susp**[2&3] (not mand) subsequent action[4] (w/n 5 yrs)[5]-**1 yr susp** (90 dys mand; a restricted lic. may be issued after this 90 dy period.[6]) 625 ILCS 5/6-206(a)(31), 6-206.1, 6-208.1(a) & (h) and 11-501.1
Persons Under 21 Years Old. Under a separate admin per se law, persons under 21 years old, who have BAC/BrAC **>0.00 but <0.08**[7&8] are subject to the following sanctions: 1st violation-**Susp 3 mos** (30 dys appears mand Restircted driving privileges may be issued after 30 dys.); Sub violation-**Susp 1 yr** (90 dys appears mand Restircted driving privileges may be issued after 90 dys.)[9] 625 ILCS 5/6-208.2 & 5/11-501.8 Note: A Judicial Driving Permit (JDP) is not authorized by law. *People v. Schmit,* 676 N.E.2d 11 (Ill.App. 3 Dist. 1997) Important. After a hearing, the State Secretary of State has the authority to "rescind" this licensing action. 625 ILCS 5/6-206(c)(3) & 6-208.2(a)
Special Administrative Per Se Law: Under another separate and independent admin. per se law, 625 ILCS 5/11-501.6, the State may susp a license where (1) a person has been arrested for any vehicle code violation, (2) there has been an accident that resulted in either an injury or fatality and (3) the driver submits

[1]As found in the breath, blood or urine "resulting from unlawful use or consumption." 625 ILCS 5/11-501.1
[2]A Judicial Driving Permit (JDP) may be issued after the first 30 days of the susp period have passed. However, the licensing agency, it appears, can issue a restricted lic. for any part or all of this susp period. A JDP may be issued following either an admin. per se law violation or an implied consent law chemical test refusal. 625 ILCS 5/6-206.1(a) **Important:** A JDP cannot be issued to a person under 18 years old. 625 ILCS 5/6-206.1(a)(4)(iv)
[3]For a case concerning when a person is considered to be a first offender and eligible for Judicial Driving Permit, see *People v. Warner,* 586 N.E.2d 679 (Ill.App. 1 Dist. 1991).
[4]Or an admin. per se violation where the person has had a previous DWI conviction or refusal to submit to a chemical test (w/n 5 yrs). 625 ILCS 5/11-500
[5]If a person is found not guilty of a DWI offense associated with an admin. per se action (where the driver submitted to a chemical test and was found to have a BAC/BrAC ≥0.08), the admin. per se action cannot be considered a prior offense in determining enhanced licensing sanctions for implied consent law refusals or subsequent admin. per se actions/DWI offenses. 625 ILCS 5/11-500
[6]**Comment:** Given the language in 625 ILCS 5/6-208.1(h), this restricted lic. may only apply in situations where the driver was operating a vehicle with a BAC/BrAC ≥0.08. I.e., such restricted driving privileges may not be available in situations where the driver has "unlawfully" used drugs.
[7]Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 625 ILCS 5/11-501.8(b)(v)
[8]A person under 21 years old is not subject to these licensing sanctions if the alcohol concentration was the result of alcohol consumed either as part of a religious service or as per prescribed medication. 625 ILCS 5/11-501.8(e)
[9]If a person under 21 years old is convicted of a drunk driving offense, any period of suspension imposed under 625 ILCS 5/6-208.2 for a refusal or admin per se action under 625 ILCS 5/11-501.8 is credited toward the minimum period of revocation imposed for the conviction. 625 ILCS 5/6-208.2(d)

Special Note: The administrative per se law does not violate a person's constitutional rights to due process of law or equal protection of the laws. *People v. Esposito,* 521 N.E.2d 873 (Ill. 1988), & *People v. Gerke,* 525 N.E.2d 68 (Ill. 1988)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Special Administrative Per Se Law: (continued) to a chemical test that indicates a BAC/BrAC ≥0.08 or the presence of any amount of cannabis/controlled substance resulting from unlaw use in their blood or urine. Driving privileges are suspended as follows: 1st Action-**3 mos**; an admin. per se action where the driver has had a previous license suspension for either (1) a DWI offense conviction or (2) a refusal/admin. per se action under 625 ILCS 5/11-501.1-**1 yr**. These suspensions, however, are not mandatory. If a driver requests a hearing, the State can modify the suspension order or issue a restricted license for employment, educational or medical purposes. 625 ILCS 5/6-208.1, 11-500 and 11-501.6(a), (c) & (e) Important. A person subject to this admin. per se law is still subject to the provisions of 625 ILCS 5/11-501.1. I.e., the driver is subject to license susps under both admin. per se laws.

Other:

I. Under 625 ILCS 5/6-206(a)(1) & 6-208, a person's license may be susp/rev for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). I.e., such action can occur prior to a conviction (see the case cited below) and may be taken without a preliminary hearing. A post action hearing is available. The law establishing this type of action has been held constitutional. *People Ex Rel Eppinga v. Edgar,* 492 N.E.2d 187 (Ill. 1986) (*cert. den.,* 479 U.S. 914 (1986))

II. Under 625 ILCS 5/6-301.3, the State may "invalidate" a driver's license based either on a certified court order or as per administrative rule.

School Bus Operators. A person's privilege to operate a school bus is canceled administratively for 3 yrs if, while operating such a vehicle, they either (1) refuse to submit to a chemical test for alcohol concentration following a traffic offense arrest or (2) submit to such a test which indicates they were driving with an alcohol concentration >0.00.[1] 625 ILCS 5/6-106.1a & 6-106.1b

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): **Rev** 625 ILCS 5/6-205, 6-208 & 11-501

Term of License Withdrawal (Days, Months, Years, etc.): 1st off-**1 yr**; 2nd off (w/n 20 yrs)-**5 yrs**; 3rd off-**10 yrs**; sub off-**Permanent**[2] 625 ILCS 5/6-208(b)(1), (2), (3) & (4) Note: A hardship license may be issued. 625 ILCS 5/6-205(c)

Mandatory Minimum Term of Withdrawal: A person, under 21 years old, who is convicted of a DWI offense, must have their license revoked for a mandatory period of 1 yr.[3] 625 ILCS 5/6-205(d)

[1] This sanction does not apply if the alcohol concentration was the result of alcohol consumed as part of a religious service or ceremony.
[2]The states that a "person may not make application for a license" if they have been convicted of a 4th or sub off. 625 ILCS 5/6-208(b)((4)
[3]Note: After this 1 yr period, such a youthful offender must have their driving privileges restricted for at least 1 additional year. If the person is still under 21 year old after the expiration of the 1 yr restricted license, restricted driving privileges may be granted in 12 month intervals until the person reaches 21. 625 ILCS 5/6-205(d)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:
Rehabilitation:
Alcohol Education:

Note: Thirty dollars ($30) of the $60 license reinstatement fee following an admin. per se suspension is deposited into the Drunk and Drugged Driver Prevention Fund. This fund is used to provide "evaluation and remedial education programs" to indigent persons charged with DWI. 20 ILCS 305/4-102

Alcohol Treatment:
Vehicle Impoundment/Confiscation:

Forfeiture (Not Mandatory). A vehicle is subject to forfeiture if it is used with the knowledge and consent of the owner in either (1) a 3rd or sub DWI offense or (2) a 2nd DWI off where the offender has had a prior alcohol/drug related reckless homicide driving offense. 720 ILCS 36-1 (¶1) Based on a showing of "financial hardship", the vehicle will not be forfeited but its title must be transferred to either a spouse or other family member. 720 ILCS 36-1 (¶5)

Authorized by Specific Statutory Authority:
Terms Upon Which Vehicle Will Be Released:
Other:

Limited Impoundment. I. Following a DWI arrest, a person's vehicle may be impounded for not more than **12 hrs** by law enforcement officers if such officers "reasonably believe" that the arrested person, upon release, will commit another DWI offense. 625 ILCS 5/4-203(e) II. If the offender is the registered owner of the vehicle: 2nd off-Impoundment for **24 hrs**; 3rd off-Impoundment for **48 hrs**. However, with the owner's consent, the vehicle may be released sooner to a person who is a competent driver. 625 ILCS 5/4-203(e-5)

Miscellaneous Sanctions Not Included Elsewhere:

Special Note: Under 730 ILCS 5/5-6-1 & 5-6-3.1, a DWI offender may be placed in a court supervised diversion program. However, an offender cannot be placed in such a program if they either have had a previous DWI conviction or have been in such a diversion program within 5 yrs of the charged off.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Reckless homicide-Cl 3 felony or Cl 2 felony[1] if the defendant was under the influence of alcohol or drugs at the time of the offense 720 ILCS 5/9-32

[1]The Class 2 Felony offense for DWI reckless homicide was held constitutional on "equal protection" grounds. *People v. Warwick,* 621 N.E.2d 282 (Ill.App. 2 Dist. 1993)
[2] Note: Death must be the result of reckless action of the accused driver. 720 ILCS 5/9-3(b) provides that being under the influence of alcohol or drugs (in the same manner as a DWI offense) at the time of the violation is presumed evidence of a reckless act.

Other Criminal Actions Related to DWI: (continued)

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Cl 3 felony-**2 to 5 yrs** 730 ILCS 5/5-8-1(a)(6); Cl 2 felony-**3 to 14 yrs** 730 ILCS 5/9-3(e)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Cl 3 & 2 felonies-Not more than **$25,000** 730 ICLS 5/5-9-1(a)(1)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** 625 ILCS 5/6-205(a)(1)
Length of Term of Licensing Withdrawal:	1st off-**2 yrs**; 2nd off (w/n 20 yrs)-**5 yrs**; subsequent offs-**10 yrs** 625 ILCS 5/6-208(b)(1), (2) & (3)
Mandatory Action--Minimum Length of License Withdrawal:	**None** Under 625 ILCS 5/6-205(c), a restricted license may be issued.
Other:	See Court Costs (Fees) on p. 3-149.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote Nos. 1 & 2.
Sanction:	
Criminal:	
Imprisonment (Term):	1st off-Cl A misd-Less than **1 yr**; 730 ILCS 5/5-8-3(a)(1), & 625 ILCS 5/6-303(a); subsequent off-Cl 4 felony-**1-3 yrs** 625 ILCS 5/6-303(d) & 730 ILCS 5/5-8-1(a)(7)
Mandatory Minimum Term of Imprisonment:	**7 cons dys**-All offenses Note: Alternatively, the defendant may be sentenced to 30 dys of community service. 730 ICLS 5/5-5-3(c)(4) & 625 ILCS 5/6-303(c)
Fine ($ Range):	1st off-Not more than **$2,500**; Sub off not more than **$25,000** 730 ICLS 5/5-9-1(a)(1) & (2) See Court Costs (Fees) on p. 3-149.
Mandatory Minimum Fine:	**None**

[1]I. It is a Cl A misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term of less than 1 yr and/or a fine of not more than $1,000. II. Persons convicted of operating a CMV after disqualification are subject to a 1 yr license revocation. This revocation does not appear to be mandatory. III. A person who operates a CMV after they have been place "out-of-service" is subject to the following CDL disqualification periods: 1st off-6 mos; 2nd off (w/n 10 yrs)-1 yr; 3rd or sub off (w/n 10 yrs)-3 yrs. If the offender was transporting passengers or hazardous materials, the disqualification periods are as follows: 1st off-1 yr; 2nd off (w/n 10 yrs)-3 yrs; 3rd of sub off (w/n 10 yrs)-5 yrs. 625 ILCS 5/6-205(12)(a) & (c), 5/6-208, 5/6-507(b), (d) & (e), 5/6-514(i) and 730 ILCS 5/5-8-3(a)(1) & 5/5-9-1(1)(2)

[2]**DWI While Suspended or Revoked.** A person, who commits a DWI offense while their driving privileges are still suspended or revoked for either a DWI offenses, implied consent law violation or vehicle homicide, is subject to the following sanctions: 1st of 2nd off (Cl 4 felony)-Imprisonment from 1 to 3 yrs /fine of not more than $25,000; 3rd off (Cl 3 felony)-Imprisonment from 2 to 5 yrs/a fine of not more than $25,000; and 4th of sub off (Cl 2 felony)-Imprisonment from 3 to 7 yrs/fine of not more than $25,000. 625 ILCS 5/11-501(c-1), 730 ILCS 5/5-8-1(a)(5) & (6) and 730 ILCS 5/5-9-1(a)(1) A vehicle is subject to forfeiture if it is used with the knowledge and consent of the owner in the above offenses. 720 ILCS 36-1 (¶1) Based on a showing of "financial hardship", the vehicle will not be forfeited to the State. However, its title must be transferred to a spouse or other family. 720 ILCS 36-1 (¶5)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp or rev** 625 ILCS 5/6-303(b)
Length of Term of License Withdrawal Action:	If the original charge is based on a susp, the susp is extended an additional period of time equal to that if the original susp. If the original charge is based on a rev, the rev is extended 1 yr. 625 ILCS 5/6-303(b)
Mandatory Term of License Withdrawal Action:	Same as above.
Other:	**Limited Impoundment.** If the offender is the registered owner of the vehicle: 2nd off-Impoundment for **24 hrs**; 3rd off-Impoundment for **48 hrs**. However, with the owner's consent, the vehicle may be released sooner to a person who is a competent driver. 625 ILCS 5/4-203(e-5)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** 55 ILCS 5/3-3013
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** (16 years old or older)

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1980) 235 ILCS 5/6-16 & 6-20
Minimum Age (Years) Possession:	**21** There are exceptions for reasons of employment or by the order of a parent. 235 ILCS 5/6-16
Minimum Age (Years) Consumption:	**21** There are exemptions for religious ceremonies and for home use. 235 ILCS 5/6-20

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes**[1&2] 235 ILCS 5/6-21
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No**[2]
Dram Shop Actions-Social Hosts:	**No**[2] *Charles v. Seigfried,* 651 N.E.2d 154 (Ill. 1995)
Other:	**None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:	**Cl A Misd** 235 ILCS 5/6-16(a)
Term of Imprisonment:	Not more than **1 yr** 730 ICLS 5/5-8-3(a)(1)
Fine ($ Range):	**$500** (mand) but not more than **$2,500** 235 ILCS 5/6-16(a) & 730 ICLS 5/5-9-1(a)(2) See Court Costs (Fees) on p. 3-149.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** 235 ILCS 5/3-12 (State licenses) and 235 ILCS 5/7-5 (local licenses) Mandatory rev. for a conviction for a "willful" violation of the law. 235 ILCS 5/7-12
Length of Term of License Withdrawal:	Not specified in the statute.[3&4]

[1]Damages for personal injuries or to property are limited to $30,000. Loss of means of support is limited to $40,000.
[2]In the *Seigfried* case as well as in previous decisions (e.g., *Cunningham v. Brown,* 174 N.E.2d 153 (Ill. 1961)), the Illinois Supreme Court has held that the Dram Shop Law is the exclusive remedy in all drams shop type liability situations.
[3]Note: In lieu of either revoking or suspending a State license, the licensee may be allowed to pay an administrative fine of $500 for each violation; however, the maximum or total fine amount that may be imposed for all violations during any licensing period is $20,000. Also, in lieu of revoking/suspending a local license, the licensee may be allowed to pay an administrative fine of $1,000 for each violation; however, the maximum or total fine amount that may be imposed during any licensing period is $10,000. 235 ILCS 5/3-12 & 7-5
[4]If a license has been revoked, the formally licensed premises cannot be re-licensed for 1 yr. 235 ILCS 5/7-13

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Cl A Misd** 235 ILCS 5/6-16(a)
Term of Imprisonment:	Not more than **1 yr** 730 ICLS 5/5-8-3(a)(1)
Fine ($ Range):	**$500** (mand) but not more than **$2,500** 235 ILCS 5/6-16(a) & 730 ICLS 5/5-9-1(a)(2) See Court Costs (Fees) on p. 3-149.
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** 235 ILCS 5/3-12 (State licenses) and 235 ILCS 5/7-5 (local licenses) Mandatory rev. for a conviction for a "willful" violation of the law. 235 ILCS 5/7-12
Length of Term License Withdrawal:	Not specified in the statute.[1&2]
Anti-Happy Hour Laws/Regulations:	**Yes** 235 ILCS 5/6-28[3]
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** 625 ILCS 5/11-502
Anti-Consumption Law (Yes/No):	**No** Note: A person cannot consume alcoholic beverages while operating a limousine. 625 ILCS 5/11-502(c)

[1]Note: In lieu of either revoking or suspending a State license, the licensee may be allowed to pay an administrative fine of $500 for each violation; however, the maximum or total fine amount that may be imposed for all violations during any licensing period is $20,000. Also, in lieu of revoking/suspending a local license, the licensee may be allowed to pay an administrative fine of $1,000 for each violation; however, the maximum or total fine amount that may be imposed during any licensing period is $10,000. 235 ILCS 5/3-12 & 7-5

[2]If a license has been revoked, the formally licensed premises cannot be re-licensed for 1 yr. 235 ILCS 5/7-13

[3]*Rollin Foods v. Village of Glendale Heights,* 646 N.E.2d 12 (Ill.App. 2 Dist. 1995)

STATE:	**INDIANA**
General Reference:	Burn's Indiana Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense	Operating a vehicle while intoxicated IC9-30-5-2 Note: The term "intoxicated" is defined as under the influence of alcohol, drugs, etc. IC9-13-2-86
Illegal Per Se Law (BAC/BrAC)	≥**0.10**[1] IC9-30-5-1(a) & 9-30-5-4(a)(1) or **Any Amount of a Controlled Substance**[2] IC9-30-5-1(b) & 9-30-5-4(a)(2) Persons Under 21 Years Old. ≥**0.02 but <0.10**[1] (Cl C Infraction) IC9-30-5-8.5
Presumption (BAC/BrAC):	≥**0.10**[1&3] IC9-30-6-15(b)(2) Persons Under 21 Years Old. ≥**0.02**[1] is a presumption of a violation of IC9-30-5-8.5. IC9-30-6-15(c)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**, (2) a Controlled Substance or (3) Any Combination of Alcohol and Drugs IC9-30-5-2 & IC9-13-2-86
Other:	A BAC/BrAC ≥**0.10**[1] is also *prima facie* evidence of intoxication. IC9-13-2-131 See Footnote No. 4 concerning school bus operators. For Commercial Motor Vehicle Operators, see p. 3-158.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No** Note: PBT law, formally IC9-4-4.5-3, repealed by P.L. 143 enacted in 1983.
Implied Consent Law: Arrest Required (Yes/No):	**No** An actual arrest is not required. Nevertheless, a request for a test must still be based on probable cause. IC9-30-6-2 & *Clark v. State,* 372 N.E.2d 185 (Ind. 1978)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** IC9-30-6-2
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) IC9-30-6-3(b)
Other Information:	In accidents where there has been either a fatality or a serious injury, a blood sample may be obtained via force from a driver suspected of any DWI offense. IC9-30-6-6(g) & (h)

[1]Standards: Grams of alcohol per either 100 milliliters of blood or 210 liters of breath. IC9-13-2-131, 9-30-5-1(a), 9-30-5-4(a), 9-30-5-8.5, 9-30-6-15(b)(2) & 9-30-15-3

[2]This State's illegal per se law also makes in an offense (Cl C misd) for a person to operate a motor vehicle with any amount of a controlled substance in their blood. Exception: It is a defense to this offense if it is shown that the defendant was using a controlled substance via a valid prescription. IC9-30-5-1(c) Note: Although the language of the statute clearly applies only to controlled substances in the blood, the Indiana Supreme Court has held that the State can present evidence of other bodily substances (e.g., urine) to establish this fact. *Rhodes v. State,* 675 N.E.2d 698 (Ind. 1997) Previous decisions by the Indiana Court of Appeals, which held that evidence of such drugs in a person's urine alone was not insufficient to prove the presence of these drugs in the blood, have been abrogated by the *Rhodes* case. *Moore v. State,* 645 N.E.2d 6 (Ind.App. 1 Dist. 1994), *Hoornaert v. State,* 652 N.E.2d 874 (Ind.App. 1995), & *Estes v. State,* 656 N.E.2d 528 (Ind.App. 1995)

[3]Under IC9-30-6-15(b)(2), a chemical test indicating a BAC ≥0.10 is to be taken as a presumption of such BAC.

[4]It is a Class A Misd. to consume either alcohol or a controlled substance within six (6) hours of operating a school bus. IC20-9.1-3-1.6 Sanctions: Jail-not more than 1 yr; fine-not more than $5,000. IC35-50-2-7 & IC35-50-3-1

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authoized Under the Implied Consent Law:

Blood:	**Yes**[1]
Urine:	**Yes**[1]
Other:	**Any other bodily substance**[1]

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	**Yes Limited**[2]
Administrative Licensing Action (Susp/Rev):	**1 yr susp**[2&3] May not be mandatory if there is a DWI conviction.[3] IC9-30-6-9(a) See Footnote No. 2 on p. 3-161. Note: A driver's license may be reinstated if the DWI charges are dismissed. IC9-30-6-11(a)(1)
Other:	**None**

[1]The implied consent law requires a driver to submit one or more "chemical tests". The substances that may be tested are breath, blood, urine or any other bodily substance. IC9-30-6-1 & IC9-30-6-6(a)

[2]Refusal to submit to a implied consent test, where there has been an accident in which there has been a death or a serious bodily injury likely to cause death, is a Cl C Infraction (a fine of not more than $500). IC9-30-7-5 & IC34-4-32-4(c) In addition, the court may suspend a persons license for not more than 1 yr. IC9-30-7-5

[3]This susp. is consecutive to any susp. for a DWI offense. However, if a court finds in the sentence order for a DWI Conviction that it is in the best interest of society, it may terminate all or any part of this suspension. IC9-30-5-14(b)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (For standards, see Footnote No. 1 on p. 3-157.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life. However, for a second violation only, the CDL may be reinstated after 10 yrs. It is a Cl C Infraction for a person to operate a CMV with a BAC ≥0.04 but <0.10. The sanction of this offense is a fine of not more than $500. IC9-24-6-8 et seq. & IC34-4-32-4(c)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1. Illegal per se (Cl C misd) - Not more than **60 dys** 2. Intoxicated off (Cl A misd) - Not more than **1 yr** 3. Either 1 or 2 above if there has been a previous conviction of either off (w/n 5 yrs) (Cl D felony[1]) - A fixed term of **1½ yrs** 4. A serious injury where a person has been operating a vehicle with a BAC/BrAC ≥0.10, with a schedule I or II controlled substance or while intoxicated-1st off (Cl D felony[1]) - A fixed term of **2 yrs**; sub off[2] (w/n 5 yrs) (Cl C felony)-A fixed term of **4 yrs** IC9-30-5-1, -2, -3 -4 & -5, IC35-50-2-6 & -7 and IC35-50-3-2, -4 & -5 Persons Under 21 Years Old. BAC/BrAC ≥0.02 but <0.10 (Cl C Infraction[2]) - **None**
Mandatory Minimum Term:	A conviction for **ANY** alcohol related driving off, where there has been a previous conviction of such an off (regardless of type) (w/n 5 yrs), there is either a mandatory imprisonment term of 5 dys (of which 48 con. hrs must be served) or mandatory community service of 10 dys. IC9-30-5-15 See Miscellaneous DWI Sanctions on p. 3-162.
Fine:	
Amount ($ Range):	1. Illegal per se off (Cl C misd) - Not more than **$500** IC35-50-3-4; 2. Intoxicated off (Cl A misd) - Not more than **$5,000** IC35-50-3-2; 3. Either 1 or 2 above if there has been a previous intoxicated off (w/n 5 yrs) (Cl D felony) - Not more than **$10,000** IC35-50-2-6; 4. A serious injury where a person has been operating a vehicle with a BAC/BrAC ≥0.10, with a schedule I or II controlled substance or while intoxicated - 1st or sub off (w/n 5 yrs) - Not more than **$10,000** IC35-50-2-6 IC35-50-2-5 & -6 Persons Under 21 Years Old. BAC/BrAC ≥0.02 but <0.10 (Cl C Infraction[2]) - Not more than **$500** IC9-30-5-8.5 & IC34-4-32-4(c)
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	For subsequent alcohol offs (w/n 5 yrs), mandatory community service of **80 hrs** in lieu of imprisonment. IC9-30-5-15

[1]A person convicted of a Class D felony may, at the court's discretion, be sentenced as if they had been convicted of a Class A misdemeanor (Jail: Not more than 1 yr; fine: Not more than $5,000) provided that this was the person's first felony conviction. IC35-50-2-7 & IC35-50-3-1

[2]A Class C infraction is a civil (not a criminal) violation.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Schrefler v. State,* 660 N.E.2d 585 (Ind.App. 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Restitution (eg Victim's Fund)	**Yes** The court may order a defendant to pay direct compensation to a victim of not more than $1,000. IC9-30-5-17 & IC35-50-5-3 There is also a victims' compensation fund. IC16-7-3.6-1 et seq.
Other:	**Ignition Interlock.** As a condition of obtaining probationary driving privileges (1st off), the court may require a defendant to use only vehicles equipped with "ignition interlock" devices. IC9-30-5-16 **Alcohol and Drug Countermeasures Fee.** All DWI offenders are assessed a fee of **$200** for alcohol and drug countermeasures programs. IC33-19-6-10 **Emergency Medical Services Fund.** The court may order a defendant to make "restitution" of up to **$1,000** to the emergency medical services fund for any needed services provided by emergency services personnel as a result of their actions. IC9-30-5-17 **Victim Impact Program.** A defendant may be ordered by the court to participate in programs with DWI offense victims. IC9-30-14 **Visitation Program.** A defendant may be required to visit emergency care facilities, coroner facilities or alcoholism treatment centers. IC9-30-14-3(3)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-159 and the Special Note below.
Administrative Per Se Law:	**Yes** Based on BAC/BrAC *prima facie* evidence ≥**0.10** 1st and sub offs-susp up to **180 dys** or until the DWI charges have been disposed of which ever occurs first. IC9-30-6-9(b) A person may be granted restricted driving privileges after 30 dys. IC9-30-6-9(e) Such privileges, however, cannot be granted if the person has been convicted of a serious injury/death related DWI off. or if they have been convicted of a previous DWI off. IC9-24-15-6.5 A person may also be issued a restricted license under IC9-30-5-11 et seq. if they have not been convicted of a DWI offense. IC9-24-15-9 If DWI charges are dismissed or the defendant is found not guilty of the DWI off, the court shall order the driver's license reinstated[1]. IC9-30-6-11

[1]If a defendant makes a request for an early trial and one is not held within 90 days of the initial hearing, the court may order the driver's license to be reinstated. Note: The reinstatement cannot take effect until 90 days after the initial hearing. IC9-30-6-11 & IC9-30-6-18

Special Note: The administrative per se law does not violate a person's constitutional right to due process of law. *Ruge v. Kovach,* 467 N.E.2d 673 (Ind. 1984)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
(continued)

Other:	Under IC9-30-6-8, the court may suspend a license at the initial hearing if there is probable cause to believe that the person was driving either while illegal per se or intoxicated. Note: The initial hearing must be held within 10 dys after the arrest. IC35-33-7-1(c)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	**Susp All offs** IC9-30-5-8.5 & IC9-30-5-10
Term of License Withdrawal (Days, Months, Years, etc.):	1st off (Illegal per se/Intoxicated)-**90 dys to 2 yrs**; 2nd or subsequent off (Illegal per se/Intoxicated) (w/n 10 yrs but more than 5 yrs from a first off)-**180 dys to 2 yrs**; 2nd or subsequent off (Illegal per se/Intoxicated) (w/n 5 yrs)-**1 to 2 yrs**; Injury Related off (where a person has been operating a vehicle with a BAC/BrAC ≥0.10, with a schedule I or II controlled substance or while intoxicated)-**2 to 5 yrs** IC9-30-5-10[1] Persons Undewr 21 Years Old. BAC/BrAC ≥0.02 but <0.10 - Not more than **1 yr** IC9-30-5-8.5
Mandatory Minimum Term of Withdrawal:	1st off (Illegal per se/Intoxicated)-**30 dys** (90 dys)[2]; 2nd or subsequent off (Illegal per se/Intoxicated) (w/n 10 yrs but more than 5 yrs from a first off)-**180 dys**[3]; 2nd or subsequent off (Illegal per se/Intoxicated) (w/n 5 yrs)-**1 yr**[3]; Injury Related off (where a person has been operating a vehicle with a BAC/BrAC ≥0.10, with a schedule I or II controlled substance or while intoxicated)-**2 yrs**[3] IC9-24-15-9, IC9-30-5-10 & IC9-30-5-12 Persons Under 21 Years Old. BAC/BrAC ≥0.02 but <0.10- **None**
Other:	
Rehabilation:	
Alcohol Education:	**Yes**[4]
Alcohol Treatment:	**Yes**[4]

[1]IC9-13-2-130 defines the phrase "previous conviction of operating while intoxicated" to include any DWI offense under IC9-30-5.
[2]A probationary (restricted) license may be issued for 180 dys. This restricted license does not take effect until a defendant's license has been suspended for 30 dys under the admin. per se law. IC9-30-5-11 & IC9-30-6-9 However, a 1st DWI offender who has refused to submit to a chemical test is not eligible for a probationary restricted license. Such a person is subject to a mandatory minimum license suspension of 90 dys. IC9-30-5-12
[3]A probationary (restricted) license may be issued for that portion of the suspension period that exceeds the mandatory minimum period. IC9-30-5-10(c) & 9-30-5-12(c)(2)
[4]For a first DWI off, the defendant may, as a condition of probation, be evaluated and treated for alcohol-related problems. The law does not specifically extend such evaluation and treatment to subsequent DWI offenders. In addition, for any misd. in which alcohol abuse is a factor, the Court may take judicial notice that an alcohol training/rehabilitation program may reduce antisocial behavior. If a defendant satisfactorily completes such a program the charges against him/her shall be dismissed. However, licensing susps. still apply. A defendant is eligible to participate only once in this type of program. IC9-30-9-1 et seq.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: **No**
Terms Upon Which Vehicle Will Be Released:
Other: Vehicle registration "certificates" shall be suspended/revoked for **6 mos** if the defendant was convicted of a felony while using a motor vehicle (e.g., subsequent DWI offenses). IC9-30-4-6(b)(3) & (d)(1)

Miscellaneous Sanctions Not Included Elsewhere: **"Home detention"** may be ordered in lieu of the minimum imprisonment sentence for certain offenses including DWI. "Home detention" may also be ordered as a part of probation. IC35-38-1-21, 35-38-2-2(a)(15), 35-38-2.5 & 35-38-3-5 It appears that this sanction, however, does not circumvent the mandatory jail/community service requirements for 2nd and sub. DWI offenders. IC35-38-3-5(a)(4)
Ignition Interlock. A person convicted of an illegal per se/intoxicated offense (w/n 5 yrs or w/n 10 yrs but more than 5 yrs of a previous conviction) may be granted probationary (restricted) driving privileges on the condition that they only operate vehicles that are equipped with ignition interlock devices. IC9-30-5-10(c) & (d)
Persons Under 21 Years Old. Under separate provisions of the law, the court may suspend the driving privileges of a person under 21 years if they have any "alcohol present in a bodily substance." IC9-24-18-12

Other Criminal Actions Related to DWI

Homicide by Vehicle:
State Has Such a Law: **Yes** I. A death where a person has been operating a vehicle with a BAC/BrAC ≥0.10 (For standards, see Footnote No. 1 on p. 3-157.), with a schedule I or II controlled substance or while intoxicated -1st off-Cl C felony; sub off[1] (w/n 5 yrs)-Cl B felony IC9-30-5-1, -2, -3 -4 & -5, IC35-50-2-5, 6 & -7 and IC35-50-3-2, -4 & -5

[1]A previous offense includes any prior drunk driving offense conviction.

License Suspension and DWI Charge Deferral. For 1st offenders (except those offenses related to serious injury/death), the DWI charges may be deferred and dismissed. The law provides for two (2) different deferral schemes depending upon the court hearing the case. (1) Under IC9-25-6-10, 9-30-9-3 & 9-30-9-5, the charges may be deferred for up to 4 yrs. As part of the deferral, the court may be susp. a defendant's licenes from 2 to 4 yrs. However, it appears that the court must suspend a defendant's license for 1 yr; the court may grant restricted driving privileges after this 1 yr period. In addition, the defendant may be required to participated in an alcohol treatment program. And, (2) DWI charges may deferred under IC16-13-6.1-15.1(6). If deferral is made under this section, a driver's license is to be suspended for at least 90 dys but not more than 2 yrs; a 30 dy suspension is mandatory..
License Suspension and Probation Following Conviction. In certain circuit courts, persons convicted of a 1st DWI offense may be placed on probation and referred to an alcohol abuse deterrent program. As part of probation the court may suspend a defendant's license from 90 dys to 4 yrs. However, it appears that a defendant's license must be suspended for 30 dys under the admin. per se law. After this 30 dy period, the court may grant probationary (restricted) driving privileges. IC9-30-9-3, 9-30-9-6 & 9-30-9-7

Other Criminal Actions Related to DWI: (continued)

	II. Involuntary Manslaughter where the death is related to vehicle operation and the defendant has committed or attempted to commit either a Cl C felony, Cl D felony or Cl A Misd (e.g., driving while intoxicated) that imposes a risk of serious bodily injury-Cl D felony IC35-42-1-4 & 35-50-2-7 III. Involuntary Manslaughter where the death is related to veh operation and the killing of a fetus-Cl D felony IC35-42-1-4
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Cl B felony-A fixed term of **10 yrs** Cl C felony-A fixed term of **4 yrs** Cl D felony-A fixed term of **1½** yrs
Mandatory Minimum Term:	See Mandatory Minimum Term on p. 3-159.
Fine ($ Range):	Cl B, C or D felonies-Not more than **$10,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	I. A death where a person has been operating a vehicle with a BAC ≥0.10, with a schedule I or II controlled substance or while intoxicated-**Susp** 9-30-5-8.5 & 9-30-5-10 II. Involuntary Manslaugter-**Susp/Rev**[1] IC9-24-15-1-2 & IC30-4-6(b)(1) & (d)(2)
Length of Term of Licensing Wighdrawal:	I. A death where a person has been operating a vehicle with a BAC ≥0.10, with a schedule I or II controlled substance or while intoxicated-**2 to 5 yrs** II. Involuntary Mansluaghter-**2 to 5 yrs**
Mandatory Action--Minimum Length of License Withdrawal:	For either I or II above, there appears to be a mandatory licensing action for **2 yrs**.
Other:	
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote No. 2.
Sanction:	
Criminal:	
Imprisonment (Term):	Cl A Misd-**60 dys to 1 yr** IC9-24-18-5(b)

[1]Registration "certificates" may also be susp/rev for not less than two (2) but no more than five (5) years of any person who has been convicted of either "involuntary" manslaughter or "reckless homicide" resulting from the operation of a motor vehicle. This appears to be mandatory. IC9-24-15-1-2 & IC30-4-6(b)(1) & (d)(2)

[2]I. It is a Cl C misd to operate a CMV during a CDL disqualification. The sanctions for this offense are a jail term of not more than 60 dys and/or a fine of not more than $500. IC9-24-6-16 & IC35-50-3-4 II. If a person operates a CMV during a Federal 24 hr out-of-service order under 49 CFR 392.5, which prohibits driving a CMV either while under the influence or with any "measured alcohol concentration", they are subject to the following sanctions. A CDL disqualification as follows: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. If the CMV operator was driving a CDL either containing hazardous materials or designed to carry more than 15 persons, the CDL disqualification periods are as follows: 1st violation-180 dys (mand) to 2 yrs; and, sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. For any violation, a civil fine of $1,000. IC9-13-2-120.5, 9-24-6-10.5 & 9-24-6-19

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	**60 dys** IC9-24-18-5(b)
Fine ($ Range)	Not more than **$500** IC35-50-3-2
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action: (Susp/Rev):	**Susp** IC9-24-18-5(c) & (d)
Length of Term of License With drawal Action:	**90 dys to 2 yrs** This suspension applies to convictions of driving while either suspended or revoked. IC9-24-18-5(c) & (d)
Mandatory Term of License Withdrawal Action:	**90 dys** IC9-24-18-5(c) & (d)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** IC9-30-10-1 et seq.
Grounds for Being Declared an Habitual Offender:	I. 2 convictions (w/n 10 yrs) for traffic law violations related to death offs as listed in IC9-30-10-4(a) (e.g., DWI resulting in death) II. 3 convictions (w/n 10 yrs) for major offs as listed in IC9-30-10-4(b) (e.g., DWI & reckess driving) III. 10 convictions for any moving violations (w/n 10 yrs) IC9-30-10-4(c) However, one of these must have been a conviction for an off listed in either IC9-30-10-4(a) or IC9-30-10-4(b).
Term of License Rev While Under Habitual Offender Status:	I. For 2 traffic law violations related to death offs convictions under IC9-30-10-4(a)-**10 yr Susp** IC9-30-10-5(b)(1) II. For 3 major off convictions under IC9-30-10-4(b)-**10 yr susp**[1&2] IC9-30-10-5(b)(2) III. For 10 convictions of moving violations under IC9-30-10-4(c)-**5 yr susp**[2&3] IC9-30-10-5(b)(3) See Footnote No. 4.

[1]After **5 yrs**, a probationary restricted license may be issued provided that offender has not been convicted of a death related offense under IC9-30-10-4(a). In addition, if one of the offenses under IC9-30-10-4(b) was for a drunk driving offense, the offender must complete a rehabilitation program before such restricted license can be issued. IC9-30-10-9(b) See Footnote No. 2 for an additional basis for issuing probationary restricted licenses.

[2]After **3 yrs**, a probationary restricted license may be issued the offender's status is based on a violation of IC9-30-10-4(b) & (c). In order to be eligible for such a license, the offender must establish, among other things, that (1) they have not been convicted of an offense death related offense as listed in IC9-30-10-4(a) and (2) they only have been convicted of either (1) driving without a license based on infractions or driving without a license for a subsequent time. IC9-30-10-9(d)

[3]A probationary restricted license may be issued at any time to an habitual offender who operates a vehicle for commercial or business purposes and where the habitual offender status is based on a violation of IC9-30-10-4(c). In order to be eligible for such driving privileges, the offender must establish, among other things, that they have not been convicted either (1) for death related offense listed in IC9-30-10-4(a) or (2) for three offenses listed in IC9-30-10-4(b). IC9-30-10-9(a) See Footnote No. 2 for an additional basis for issuing probationary restricted licenses.

[4]An habitual offender cannot obtain hardship driving privileges under IC9-24-15. IC9-24-15-9 & IC9-30-10-14(c)

Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	Cl D Felony IC9-30-10-16 At the court's discretion, a 1st offender may be sentened for a Class A Misd. See Footnote No. 1 on p. 3-159.
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Cl D Felony-**1½ yrs**; Cl A Misd-Not more than **1 yr** IC35-50-2-7 & IC35-50-3-1
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Cl D Felony-Not more than **$10,000**; Cl A Misd-Not more than **$5,000**
Mandatory Minimum Fine:	**None**
Licensing Actions (Specify):	For a Cl D Felony conviction-**Forfeiture of license for life**[1] IC9-30-10-16(b) Note: It is Cl C Felony for a person to operate a motor vehicle after their license has been suspended for life; sanctions: Jail-not more than 4 yrs; fine-not more than $10,000. IC9-30-10-17 & 35-50-2-6 For a Cl A Misd conviction-the court on its own discretion may add an **additional susp** period (time period to be set by the court) to any suspensions already imposed. IC9-30-10-16(b)

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Taffic Accidents:	
State Has Such a Law (Yes/No):	**Yes**[2] IC9-27-5-4(a)
BAC Chemical Test Is Given to the Following Persons:	
Driver:	**Yes**[2] IC9-27-5-4(a)
Vehicle Passengers:	**No**
Pedestrian:	**Yes** for persons ≥15 yrs old[2] IC9-27-5-4(a)

[1]After **10 yrs**, a person may petition the court for reinstatement of their license. IC9-30-10-14(a)(1) However, under some circumstances, offender's license may be reinstated after only **3 yrs**. For early reinstatement, the offender must not have been convicted of a death related offense listed in IC9-30-10-4(a) and the life time suspension must have based on traffic infractions. IC9-30-10-14(e)
[2]The State Department of Toxicology in conjunction with the Office of Highway Safety may require "appropriate agencies" to collect "necessary specimens" (w/n 4 hrs) from either drivers or pedestrians who are killed in traffic accidents. IC9-27-5-4(a)

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[1] (Year Eff: 1934) IC7.1-1-3-25, 7.1-5-7-1, 7.1-5-7-8 & 7.1-5-10-22
Minimum Age (Years) Possession:	**21** IC7.1-5-7-7(a)(1)
Minimum Age (Years) Consumption:	**21** IC7.1-5-7-7(a)(2)
Dram Shop Laws and Related Legal Actions:	
State has a Dram Shop Law (Yes/No):	**Yes** IC7.1-5-10-15.5[1] **Comment:** This statute may have abrogated, at least in part, the case law noted below.
"Dram Shop Law" Cocept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Picadilly, Inc. v. Colvin,* 519 N.E.2d 1217 (Ind. 1988)[2], *Elder v. Fisher,* 217 N.E.2d 847 (1966), & *Parrett v. Lebamoff, Inc.,* 408 N.E.2d 1344 (Ind. App. 1980)
Dram Shop Actions-Social Hosts:	**Yes**[3] *Gariup Const. Co. v. Foster,* 519 N.E.2d 1224 (Ind. 1988)[3], *Ashlock v. Norris,* 475 N.E.2d 1167 (Ind. App. 3 Dist., 1985), & IC7.1-5-10-15.5[3]
Other:	An alcoholic beverage licensee is liable for the injuries or death of an intoxicated patron, who is over 21 yrs old, if two conditions are proven. (1) The licensee knew that the patron was visibly intoxicated when they were served alcoholic beverages. And, (2) the furnishing of such beverages was the proximate cause of the injury or death. IC7.1-5-10-15.5(c).[4]
Criminal Action Against Owners or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Cl B Misd** IC7.1-5-1-8, 7.1-5-10-15, 7.1-5-10-22 and 35-50-3-3
Term of Imprisonment:	Not more than **180 dys**
Fine ($ Range):	Not more than **$1,000** Note: An administrative fine of not more than $1,000 may also be imposed. IC7.1-3-23-3

[1]It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to "misrepresent" their age in order to obtain alcoholic beverages. IC7.1-5-7-1

[2]Under IC7.1-5-10-15.5, a commercial server or a social host is not liable for the actions of intoxicated patrons or guests unless (1) the commercial server/social host had "actual knowledge" that the patron/guest was visibly intoxicated at the time alcoholic beverages were "furnished" and (2) the intoxicated person was the proximate cause of the injury or damage alleged. *Weida v. Dowden,* 664 N.E.2d 742 (Ind.App. 1996) Also under IC7.1-5-7-8(b), educational institutions, it appears, are not subject to civil liability unless they sell/furnish alcoholic beverages to a minor.

[3]After April 1, 1986, common law dram shop actions were restricted by IC7.1-5-10-15.5. This decision was based on a factual situation that occurred prior to this date.

[4]**Historical Note & Comment:** The dram shop law was amended in 1996 to limit the scope of liability in situations where an adult patron has been injured or killed as a result of their own (voluntary) intoxication. The legislature apparently felt that such an amendment was necessary in order to limit the holding in *National R.R. Passenger Corp. v. Everton by Everton,* 655 N.E.2d 360 (Ind.App. 1995)

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners or Establishements that Serve Alcoholic Beverages to Intoxicate Patrons:	
License of Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** IC7.1-3-23-2, 7.1-3-23-5 and 7.1-5-10-22
Length of Term of License Withdrawal:	For revs, no period is specified in the statute IC7.1-3-23-6 For susps, not more than 30 dys IC7.1-3-23-7
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Drinking Age:	
Type of Criminal Action:	**Cl C Misd**[1] IC7.1-5-7-8, 7.1-5-10-22 and 35-50-3-4
Term of Imprisonment:	Not more than **60 dys**
Fine ($ Range):	Not more than **$500** Note: An administrative fine of not more than $1,000 may also be imposed. IC7.1-3-23-3
Administrative Actions Against Owners of Establishlments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** IC7.1-3-23-2, 7.1-3-23-5, 7.1-3-23-26.1 and 7.1-5-10-22
Length of Term License Withdrawn:	For revs, no period is specified in the statute. IC7.1-3-23-6 For susps, not more than 30 dys. IC7.1-3-23-7
Anti-Happy Hour Laws/Regulations:	**Yes** IC7.1-5-10-20
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** However, the law only applies if the vehicle operator has a BAC/BrAC ≥0.04 (For standards, see Footnote No. 1 on p. 3-157.). The sanctions for this offense apply only to drivers. IC9-30-15-3
Anti-Consumption Law (Yes/No):	**Yes** Drivers only IC9-30-15-4

[1]IC7.1-5-7-8(a) states that "[i]t is a Class C misdemeanor for a person to recklessly sell, barter, exchange, provide, or furnish an alcoholic beverage to a minor."

STATE:	**IOWA**
General Reference:	Iowa Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an alcoholic beverage[1] §321J.2(1)(a)
Illegal Per Se Law (BAC/BrAC):	**≥0.10**[1,2&3] or **Any Amount of a Controlled Substance in the Blood or Urine**[4] §§321J.1(1) and 321J.2(1)(b) & (c)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** or (2) Any Combination of Drugs Including an Alcoholic Beverage[1] §321J.2(1)(a)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §321J.5
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[5] §321J.6(1)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §321J.6
Refusal to Submit a Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §321J.16
Other Information:	A person may be required to submit to a chemical test via a search warrant issued pursuant to an investigation of involuntary manslaughter (§707.5) where a traffic accident has resulted in a death or in a personal injury likely to cause death and there is evidence of a DWI off §321J.10

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §321J.6(2)
Urine:	**Yes** §321J.6(2)
Other:	**None**

[1]A drunk driving offense is described as "operating while intoxicated". However, "operating while intoxicated" is defined as operating a vehicle while under the influence of an alcoholic beverage or illegal per se. Note: Under §321J.1(2), "[a]lcoholic beverage includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption."

[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of 0.10 or more or (2) a urine alcohol concentration of 0.10 or more.

[3]Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §§321.1(1) & 321J.1(1)

[4]There is an "affirmative defense" if the controlled substance was present because of a valid prescription. §321J.2(7) & (8)

[5]A request to submit to a test is based either on (1) reasonable grounds of either a drunk driving offense or a violation of §321J.2A (persons under 21 yrs old driving with a BAC/BrAC ≥0.02) and any one of the following: (a) An arrest; (b) an accident resulting in injury or death; (c) a PBT refusal; or, (d) a PBT BAC/BrAC reading of ≥0.10 (for CMV operators, PBT BAC/BrAC reading of ≥0.04 and for persons under 21 yrs old PBT BAC/BrAC reading of ≥0.02) or (2) on reasonable grounds that the driver was under the influence of drugs or a combination of drugs and alcohol but a PBT BAC/BrAC reading is <0.10. §321J.6(1)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (For standards, see Footnote No. 3 above.), (2) are under the influence of alcohol, other drug or a controlled substance or (3) refuse to submit to a chemical test for alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has violated 49 CFR 392.5 (e.g., consumed any alcohol within 4 hours of operating a CMV) must be placed "out-of-service" for 24 hours. §§321.1(1) & (11), 321.208, 321.208A, 321J.6 and 321J.8(3)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**[1]
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** An offender must, at their own expense, submit to a substance abuse evaluation. §§321J.2(3)(b), 321J.3 & 321J.17 Also, the court may order an evaluation if it thinks that the defendant "regularly abuses alcohol or other controlled substance". §901.4A

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**Rev** 1st refusal-**1 yr** (90 dys mand); 2nd or subsequent refusal[2]-**2 yrs** (1 yr mand) §§321J.9 & 321J.20 See Footnote No. 3 and the Special Note below. See Civil Penalty on p. 3-172.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy on p. 3-171.
Imprisonment:	See Alcohol Treatment on p. 3-173.
Term (Day, Month, Years, Etc.):	1st off (Serious misd)-**Not more than 1 yr**; 2nd off (w/n 12 yrs) (aggravated misd)-**Not more than 2 yrs**; 3rd and sub off (w/n 12 yrs) (Cl D felony)-**Not more than 5 yrs** (or up to 1 yr in the county jail §902.9); Serious Injury related to a drunk driving off (Class D felony)-**Not more than 5 yrs** (or up to 1 yr in the county jail) §§321.12(4), 321J.2(2) & (3), 707.6A(3), 902.9, 903.1 and 907.3(3)(c)

[1]An offender is eligible for deferred judgement. §907.3 However, such persons are subject to a license revocation from 30 (mand) to 90 dys. A 90 dy revocation is mandatory if the offender refused to submit to a chemical test. §321J.4(2)
[2]A prior drunk driving offense conviction or a prior admin. per se violation is considered the same as a previous refusal for license sanction enhancement purposes. §321J.9(1) Note: These offenses stay on a person's driving record for 12 yrs. §321.12(4)
[3]If a defendant is under 18 years old, the period of revocation shall be either as indicated or until the person reaches 18 whichever is the longer revocation period. §321J.4(6)

Special Note: I. For either a 1st or subsequent refusal, a restricted license may be issued by the licensing agency provided the minimum period of license revocation has expired. A restricted license may only be used for education, treatment or employment purposes. §321J.20(1) However, a person must install an **"ignition interlock"** system on the vehicle(s) they operate as a condition for obtaining a restricted license. §§321J.9(2)(b) & 321J.20(6) Important. The court is prohibited from issuing a temporary restricted license for employment purposes to persons who refuse to submit to a chemical test and who are <21 yrs old. §321J.4(8)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:	1st off (Serious misd)-**48 hrs** (Limited Application)[1]; 2nd off (w/n 12 yrs) (aggravated misd)-**7 con dys**[2&3]; 3rd and sub offs (w/n 12 yrs) (Cl D felony)-**30 con dys**[2&3]; Serious Injury related to a drunk driving off (Class D felony)-**None**
Fine:	
Amount ($ Range):	1st off (Serious misd)-**$500/$1,000**[4]; 2nd off (w/n 12 yrs) (Aggravated misd)- **$1,500 to $5,000**; 3rd and sub offs (w/n 12 yrs) (Cl D felony)-**$2,500 to $7,500**; Serious Injury related to a drunk driving off (Class D felony)-**$500 to $7,500** See Civil Penalty on p. 3-172.
Mandatory Min. Fine ($):	1st off (serious misd)-**$500/1,000**[1&4] (Limited Application) (See community service below.); 2nd off (Aggravated misd)-**$1,500**; 3rd and sub offs (Cl D felony)-**$2,500**; Serious Injury related to a drunk driving off (Class D felony)-**$500** (appears to be mandatory)
Other Penalties:	
Community Service:	I. 1st off (serious misd)-Community service in lieu of part of or all of the fine. §321J.2(2)(a) II. Under separate provisions, the court may order either a 1st or sub offender to perform community service which is equivalent in value to any fine which has been imposed. The value of the community service to be performed is based on the Federal minimum wage. §909.3A
Restitution (eg Victim's Fund)	**Yes** I. For any drunk driving offense, the court may order the defendant to make restitution for any damages resulting from the offense. §321J.2(8) Note: Court ordered restitution is possible under §910.1 et seq. II. In addition, a victim is eligible for restitution from the State's crime victim reparation fund. §912.1 et seq.
Other:	**Special Note:** Deferred judgment is allowed for a 1st DWI off. During such deferment their license is revoked 30 to 90 dys. The same mand lic rev periods and temporary restricted license provisions apply as for DWI. §§321J.4(2) & 907.3

[1]For a 1st offense, there is a mandatory imprisonment sentence of 48 hrs and fine as indicated if the offender (1) had a BAC/BrAC **>0.15**, (2) refused to submit to a chemical test under implied consent law or (3) committed a drunk driving offense that injured another person. §§321J.2(3)(a) & 907.3(2)

[2]This sentence may not be deferred or suspended. §321J.2(3)(a)

[3]For 2nd and subsequent offenders the 7 dy and 30 dy minimum jail sanctions respectively must be served consecutively. §321J.2(3)(d) However, if consecutive minimum jail terms would cause a hardship on the defendant or if there is insufficient jail space, the minimum terms may be served in segments of at least 48 hrs. If this is done, the defendant must perform community service. The period of community service is decided by the court and is based upon that which the court has "deemed appropriate". §321J.2(3)(d) See Alcohol Treatment on p. 3-173.

[4]If there is no personal injury or property damage, the fine may be reduced to a not less than $500. §321J.2(2)(a)(2)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Kocher,* 542 N.W.2d 556 (Iowa 1996), & *State v. Krebs,* 562 N.W.2d 423 (Iowa 1997)

Historical Note: In 1998, §§321J.2 and 907.3(3)(c) were amended so as to clearly indicate that mandatory incarceration sanctions were to be imposed and other sanctions (e.g., fine or community service) were not to be suspended for drunk driving offenses.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)

Surcharges. A surcharge of 30% of the fine actually imposed is assessed against anyone convicted of a State criminal offense and a drug abuse resistance education surcharge of $5. §911.2
Civil Penalty. A separate (i.e., additional) civil penalty of **$200** is assessed against a person who has had their license revoked as a result of either a DWI conviction, admin. per se violation or implied consent law refusal. Part of the money collected from this penalty is placed in a victim reparation fund. This penalty must be paid before restricted driving privileges can be granted. §321J.17
Emergency Response Costs. The court may order an offender to pay the costs of an emergency response resulting from a drunk driving offense. The cost cannot exceed $500 for each public agency for each response. §321J.2(8)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

See the Special Note below and Double Jeopardy on p. 3-171.
Yes (1) ≥**0.10** (BAC/BrAC/UrAC See Footnote No. 3 on p. 3-169.) (2) **The Presence of a Controlled Substance or Other Drug**[1] (3) **A Combination of Alcohol and Another Drug in Violation of the DWI Law** (§321J.2) 1st violation-**Rev 180 dys** (30 dys mand; if the offender is <21 yrs old-60 dys); 2nd or sub violation[2] (w/n 12 yrs)-**Rev 1 yr** (mand) See Footnote No. 1 on p. 3-173. §§321J.12 & 321J.20 Important. If a defendant is under 18 years old, the period of revocation shall be either as indicated or until the person reaches 18 whichever is the longer revocation period. §321J.4(6)
Persons Under 21 Years Old-≥**0.02 but <0.10** (BAC/BrAC/UrAC See Footnote No. 3 on p. 3-169.) 1st violation-**Rev 60 dys**[3]; 2nd or sub violation (w/n 12 yrs)-**Rev 90 dys** (mand) §§321J.2A & 321J.12(5) A restricted license is not available from either the licensing agency or the courts. §§321J.4(8) & 321J.20(2)

Other:

Under §§321.210 & 321.212, a person's license may be suspended for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

[1]**Comment:** It would appear that, indirectly, the "affirmative defense" noted in Footnote No.4 on p. 3-169 would also apply to admin. actions. Under §321J.13(2)(c), evidence of this violation under the DWI law must be considered prior to an admin. licensing action. Thus, since the "affirmative action" would mitigate the DWI offense, it would also appear to mitigate the admin. action as well.
[2]A prior drunk driving offense conviction or a prior refusal to submit to a chemical test is considered the same as a previous admin. per se violation for license sanction enhancement purposes.
[3]A 1st offender may participate in a substance abuse awareness program. §321J.25(4)

Special Note: I. An admin. per se violator or DWI defendant, who is under 21 years old, is not eligible for restricted driving privileges. §321J.4(8) II. If an admin. per se violator or DWI defendant is under 18 years old, the period of revocation shall be either as indicated or until the person reaches 18 whichever is the longer revocation period. §321J.4(6)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:	See the Special Note on p. 3-172.
Type of Licensing Action (Susp/Rev):	1st off-**Rev**; 2nd off (w/n 12 yrs)-**Rev**; 3rd and sub. offs (w/n 12 yrs)-**Rev**; Any DWI off conviction where there has been a serious injury-**Rev** §§321.12, 321J.2(2)(a) & (3) and 321J.4
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**180 dys-1 yr**; 2nd off (w/n 12 yrs)[1]-**2 yrs**; 3rd and sub. offs (w/n 12 yrs)[1]-**6 yrs** DWI off involving serious injury-**1 yr**[2] §§321J.2(2)(a) & 321J.4
Mandatory Minimum Term of Withdrawal:	1st off-**30 dys**[3]/**60 dys** if the offender was <21 yrs old/**90 dys** if there was a chemical test refusal; 2nd off-**1 yr**[3]; 3rd and sub offs-**1 yr**[3] §§321J.4 & 321J.20
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** 1st and sub §§321J.2(2)(a), 321J.3 & 321J.22 See Footnote No. 2 on p. 3-172.
Alcohol Treatment:	**Yes** I. Based upon a substance abuse evaluation, a court may order a DWI offender to attend a treatment program. Such a program could include inpatient treatment. The time the offender spends in this inpatient treatment program is credited towards their sentence. §321J.3 II. Under separate provisions of law, the court may commit a subsequent offender, as a condition for suspending a sentence, to an inpatient treatment program for alcoholism or drug addiction. Again, the time the offender spends in this program is credited towards their sentence. §321J.3(2) III. In addition, under §901.5(8), the court may order a defendant to complete a treatment program pursuant to an evaluation for alcohol or drug abuse conducted under §901.4A.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**Impoundment (or Immobilization).** For a 2nd or sub off, the vehicle owned and used by the defendant in the offense shall be either impounded (or immobilized) for either the period of the driver's lic rev or for 180 dys whichever is longer. Law enforcement authorities seize the vehicle's license plates (and, if the vehicle is in custody, its registration). New registration plates shall not be issued until the above period expires.[4] §321J.4B

[1]A previous off includes either an admin. per se action or an implied consent law violation. §321J.4(1)
[2]In addition to any other revocation or suspension.
[3]**Special Note:** For a drunk driving offense conviction (including injury related offenses) or for an admin. per se violation, the licensing agency may issue a person a restricted license after the minimum mandatory license revocation period has expired. The restricted license may only be used for education, treatment or employment purposes. Important. The court is prohibited from issuing a temporary restricted license for employment purposes to offenders or admin. per se violators who are <21 yrs old. §321J.4(8) Note: Such a license is not available via the licensing agency. §321J.20(2) See Ignition Interlock under Miscellaneous Sanctions on p. 3-174.
[4]Either a non-resident co-owner or a family member (where the family has only one vehicle) may have this action rescinded provided an ignition interlock system is installed on the vehicle. §321J.4B

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions Not Included Elsewhere:	I. **Ignition Interlock.** A 2nd or subsequent offender, after the mandatory license revocation period, may be granted restricted driving privileges provided they install ignition interlock devices on their vehicles. §321J.4 This device must be installed prior to the granting of restricted driving privileges. §321J.17(1) II. Persons sentenced to the county jail may be assigned to **"home detention"** instead of incarceration. §356.26 Important. See the Special Note & Comment below.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** If death is unintentional and is related to drag racing-Class D felony If death is related to reckless driving-Class C felony If death is related to a drunk driving offense-Class B felony §707.6A
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Class D felony-Not more than **5 yrs** §902.9(4) Class C felony-Not more than **10 yrs** §902.9(3) Class B felony-Not more than **25 yrs** §902.9(1)
Mandatory Minimum Term:	If death is related to reckless driving-**10 yrs**[2] §902.12 If death is related to drunk driving-**25 yrs**[2] §902.12
Fine ($ Range):	Class D felony-**$500 to $7,500**[1] §902.9(4) Class C felony-**$500 to $10,000**[1] §902.9(3) Class B felony-**None**
Mandatory Minimum Fine:	For Class D or C felonies, **$500** appears to be mand.
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §§321.209(1), 321J.4(5) & 707.6A(1)(a)
Length of Term of Licensing Withdrawal:	**1 yr** §321.212(1)(a) **6 yrs** if death was related to a drunk driving offense. §707.6A(1)

[1]**Surcharge.** A surcharge of 30% of the fine actually imposed is assessed against any person who is convicted of a State criminal offense. §911.2

[2]A person is not eligible for parole of work release. However, their sentence may be reduced for "good conduct time". §902.12

Special Note & Comment (Child Endangerment): Iowa's criminal law provides for sanctions against persons who either abuse or neglect a child under their control. The criminal law defines a child as a person <14 yrs old. §702.5 I. The Iowa Supreme Court has held that a parent can be charged with child neglect (recklessly exposing their child to a danger), a Class C felony, if, while transporting their child, they operate a motor vehicle in an intoxicated condition. §726.3 & *State v. Caskey,* 539 N.W.2d 176 (Iowa 1995) II. There is the possibility that general criminal law provisions concerning child endangerment may apply as well in such a situation. The child endangerment law makes it an offense to create a situation where a child is exposed to a "substantial risk". This offense is an aggravated misdemeanor unless the child is injured in which case it is a Class C felony. §726.6 However, 3 or more offenses within 12 months against the same child, where at least one of the offenses was an injury, is a Class B felony. §726.6A III. The sanctions for these offenses are as follows: Class B felony-incarceration for not more than 50 yrs (Note: Normally, for a Class B felony conviction, a person is subject to an imprisonment term of not more than 25 yrs. However, the law specifically doubles this term in the case of multiple child endangerment convictions where there has been an injury in at least one case.); Class C felony-incarceration for not more than 10 yrs and/or a fine of not more than $10,000; and, aggravated misdemeanor-incarceration for not more than 2 yrs and/or a fine of not more than $5,000 §§726.6, 902.9 & 903.3

Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum Length of License Withdrawal:	**1 yr** §321.212(1)(a) **2 yrs** if death was related to a drunk driving offense. Restricted driving privileges are available after this 2 yr revocation period.[1] §§321J.4(5) & (8), 321J.20(2) & 707.6A(1)
Other:	I. **Civil Penally.** There is a civil penalty of **$200** (if the offender is ≤19 yrs old, the civil penalty is $50). §321.218A If the death was related to drunk driving offense, the civil penalty is **$200** (applies to all offenders regardless of age). §321J.17 II. If the death was related to drunk driving, the offender may be required attend either alcohol education or treatment programs. §707.6A III. **Special License Suspension.** Prior to an adjudication of a person for vehicle homicide related to either reckless driving or drunk driving, their license is suspended until the completion of the judicial proceedings. If they are not convicted, their license is reinstated. §321.210C
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. 2 and the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	Serious misd-Not more than **1 yr** §§321J.21 and 903.1(1)(b)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$1,000 to $1,500** §§321J.21 & 903.1(1)(b) See Footnote 1 on p. 3-174. There is also a Civil Penalty of **$200**. §321J.17
Mandatory Minimum Fine:	**$1,000** §321J.21
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp or rev** §321J.21 See Impoundment and Forfeiture below.
Length of Term of License Withdrawal Action:	Original Susp/Rev extended an additional like period[1] §321J.21
Mandatory Term of License Withdrawal Action:	Original Susp or Rev extended an additional like period[1] §321J.21

[1]A restricted license may be issued by the court provided such a license is needed in order for the person to remain employed. §321J.4(8) Note: Such a license is not available via the licensing agency. §321J.20(2) An offender must install an "**ignition interlock**" system on the vehicle(s) they operate as a condition for obtaining a restricted license. This requirement must last for at least 1 yr unless a longer period is ordered by the court under §321J.4. §§321J.4(8) & 321J.20(6)

[2]I. It is a simple misd to operate a CMV during a CDL disqualification. The sanctions for this offense are a jail term of not more than 30 dys, a fine of $50 (may be mand) to $100 and an additional disqualification period which is to equal to the original. §§321.218(5) & (6) and 903.1(1)(a) II. A person, who operates a CMV while under a CDL out-of-service order, is subject to a "scheduled fine" of $100 and to a CDL disqualification. The disqualification periods are as follows: 1st violation-90 dys; 2nd violation (w/n 10 yrs)-1 yr; 3rd and subsequent violation (w/n 10 yrs)-3 to 5 yrs. §§321.208,321.208A & 805.8(2)(z)

Impoundment & Forfeiture. A motor vehicle is subject to impoundment (but not immobilization) if it is driven by a person, whose license is still under revocation for a drunk driving offense. See Impoundment on p. 3-173 for details. However, 2nd or subsequent violation, the vehicle is subject to forfeiture. §321J.4(2) & (6)

Special Note: It is a serious misdemeanor for a person to operate a vehicle in violation of an impoundment or immobilization order. §321J.4B(12) The sanctions for this offense are an imprisonment term ≤1 yr and/or a fine of $250 to $1,500. §903.1 In addition, the vehicle used in the offense must be forfeited. §321J.4B(9)

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** 321.555, 321.560 & 321.561
Grounds for Being Declared an Habitual Offender:	3 or more serious offs (w/n 6 yrs) or 6 or more minor offs (w/n 2 yrs)
Term of License Rev While Under Habitual Offender Status:	If based on serious offs-**2 to 6 yrs**[1]; if based on minor offs-**1 yr** **Special Note:** A person, who has had their license revoked as an habitual offender based only on DWI offense convictions and who is not otherwise eligible for a restricted license, may, nevertheless, receive such a license provided three (3) conditions are satisfied: (1) Such a license is needed in order for the person to remain employed, (2) the person installs an **"ignition interlock"** system in their vehicle(s) and (3) the minimum period of license revocation for the DWI offense has expired. §321J.4(8)
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Aggravated misd §§321.561 & 903.1
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **2 yrs**
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$500 to $5,000**[2] See Footnote No. 1 on p. 3-174.
Mandatory Minimum Fine ($):	**$500** appears to be mand.
Licensing Actions (Specify):	Same as for driving while revoked.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1986) §§123.3(19), 123.47, 123.49(2)(h) & 123.59
Minimum Age (Years) Possession:	**21** There are exemptions for medical reasons, employment and home use with parental consent. §123.47

[1]If habitual offender status is based only on the operation of vehicles while license is either suspended, revoked or barred, a person is eligible for restricted driving privileges based on a showing of extreme hardship. §§321.215 & 321.560

[2]There is a civil penalty of **$200** (if the offender is ≤19 yrs old, the civil penalty is $50). §321.218A

Other State Laws Related To Alcohol Use: (continued)

Minimum Age (Years) Consumption:	**None**
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §123.92[1]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes**[1] *Lewis v. State,* 256 N.W. 2d 181 (Iowa 1977), & *Haafke v. Mitchell,* 347 N.W.2d 381 (Iowa 1984)
Dram Shop Actions-Social Hosts:	**Yes Limited** Liability limited to injuries caused by minors (persons under the legal drinking age) who are knowingly served alcoholic beverages by social hosts. In order to be liable, the social host must "physically" serve alcoholic beverages to the minor. §§123.49(1) & 123.92[2]
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	See the Special Note below.
Type of Criminal Action:	**Simple misd** §§123.49(1), 123.50(1) & 903.1(1)(a)
Term of Imprisonment:	Not more than **30 dys**
Fine ($ Range):	**$50 to $100**[3] (A $50 fine appears to be mand.)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev**[4] §§123.39, 123.40 & 123.50(2)
Length of Term of License Withdrawal:	Susp not more than **1 yr** Rev **2 yrs** Civil Penalty (Fine): Not more than **$1,000**[4] §123.39(1)(a)

[1]The dram shop law provides that alcoholic beverages be "sold and served" to a patron before a liability action can be maintained against a licensee. The term "served" has be judicially interpreted to mean immediate consumption. *Eddy v. Casey's General Store, Inc.,* 485 N.W.2d 633 (Iowa 1992), & *Paul v. Ron Moore Oil Company,* 487 N.W.2d 337 (Iowa 1992) Note: The dram shop law abolished "common law negligence actions" against persons who furnish alcoholic beverages to minors. *Hoth v. Meisner,* 548 N.W.2d 152 (Iowa 1996)

[2]In *Bauer v. Dann,* 428 N.W.2d 658 (1988), the Iowa Supreme Court held that §123.49(1) only abolished social host liability associated with the service of alcoholic beverages to intoxicated adult guests; i.e., previous case law, *Clark v. Mincks,* 364 N.W.2d 226 (Iowa 1985), establishing such liability was abrogated by this law. See also *Fullmer v. Tague,* 500 N.W.2d 432 (Iowa 1993) A business social host is not liable for the actions of an intoxicated adult employee in situations where the employer hosted an employee party where alcoholic beverages are served gratuitously. *Summerhays v. Clark,* 509 N.W.2d 748 (Iowa 1993)

[3]See Footnote No. 1 on p. 3-174.

[4]A conviction for a violation of the liquor control laws is not a prerequisite either to a license suspension/revocation or to a civil penalty (fine). §123.39(1)(c)

Special Note: I. Sec. 123.91 provides for additional sanctions for persons who violated the liquor laws. For a 2nd offense, a person commits a serious misdemeanor; the sanctions for this offense are jail term of not more than 1 yr and/or a fine of not more than $1,000 (§903.1(1)(b)). For a subsequent offense, a person commits an aggravated misdemeanor; the sanctions for this offense are imprisonment for not more than 2 yrs and/or a fine of not more than $5,000 (§903.1(2)).

II. Sec. §123.59 also make an offense to sell alcoholic beverages to persons under 21 years old. It is a serious misdemeanor (1st off) to violate §123.59 and the sanctions for this offense are jail term of not more than 1 yr and/or a fine of not more than $1,000 (§903.1(1)(b)).

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	See the Special Note below.
Type of Criminal Action:	**Simple misd** (a scheduled violation) §§123.3(19), 123.47, 123.49(2)(h), 123.50(1) & 805.8(10)(a)
Term of Imprisonment:	**None**
Fine ($ Range):	Licensee (Permittee)-**$1,500**[1] §805.8(10)(a) Employee of Licensee (Permittee)-**$500**[1] §805.8(10)(a)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** 1st off - **None**[2]; 2nd off (w/n 2 yrs) - **Susp**; 3rd off (w/n 3 yrs) - **Susp**; 4th off (w/n 3 yrs) - **Rev** §§123.39, 123.40 & 123.50(3) See Footnote No. 3.
Length of Term License Withdrawal:	1st off - **None**[2]; 2nd off (w/n 2 yrs) - **30 dys**; 3rd off (w/n 3 yrs) - **60 dys**; 4th off (w/n 3 yrs) - **2 yrs** **Civil Penalty.** 2nd off (w/n 2 yrs) or 3rd off (w/n 3 yrs)-**$1,500** §123.50(3)(b) & (c) **Comment:** This civil penalty appears to apply only to licensees (permittees). **Important.** For Other Administrative or Civil Sanctions, See Footnote No. 3.
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes Limited** Applies only to drivers §321.284 The law states that "a person driving a motor veh. shall not knowingly possess in a motor veh. upon a public street or highway an open or unsealed bottle, can, jar or other receptacle containing an alc. bev., wine, or beer with the intent to consume..."
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §123.46 The law states that "it is unlawful for any person to use or consume alcoholic liquors or beer upon the public streets or highways..."

[1]See Footnote No. 1 on p. 3-174.
[2]For a 1st offense, the license is not suspended but the violator is assessed a "civil penalty" of $500. If the violator does not pay this assessment, the license is suspended for 14 dys. §123.50(3)(a)
[3]It appears that the following administrative or civil sanctions could be imposed via separate statutory authority: Under §123.39(1)(a), it may also be possible to suspend a license for not more than 1 yr and/or impose a civil penalty of not more than **$1,000**. Note: a conviction for a violation of the liquor control laws is not a prerequisite either to a license suspension/revocation or to a civil penalty. §123.39(1)(c)

STATE:	**KANSAS**
General Reference:	Kansas Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle §8-1567(a)(3)
Illegal Per Se Law (BAC/BrAC):	≥**0.08**[1&2] §8-1567(a)(1), (a)(2) & (q)(1)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** or (2) a Combination of Alcohol and Drugs §8-1567(a)(4) & (5)
Other:	A BAC/BrAC ≥**0.08**[2] is *prima facie* evidence that the defendant was under the influence of alcohol. §8-1005(b) No person, who is an habitual user of narcotics, shall operate or attempt to operate a motor vehicle. §8-1567(b) For Commercial Motor Vehicle Operators, see p. 3-182.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §8-1012
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[3] §8-1001(b)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §8-1001(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §8-1001(f) & *State v. Rubick,* 827 P.2d 780 (Kan.App. 1992)
Other Information:	A blood test may be administered without the driver's consent in situations where there is probable cause of any DWI offense and there was either a serious injury or the death of another person. §8-1001(f)(1)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §8-1001(a)
Urine:	**Yes** §8-1001(a)
Other:	**Other Bodily Substances** §8-1001(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Yes** §8-1567(n) Certain diversion programs are excepted.[4]
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alc. & Drug Evaluation Required §§8-1008(c) & (d) and 8-1567[5]

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.
[2]Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §§8-1013(a)(1) & 8-1567(q)(1)
[3]No arrest is required if the person has been involved in a motor vehicle accident resulting in property damage, personal injury or death.
[4]A defendant is not eligible to enter a diversion program if: (1) They have previously participate in such a program; (2) they have been convicted of an alcohol related driving offense; (3) their alcohol concentration at the time of arrest was 0.20 or more; or (4) they were involved in an accident which has resulted in either a death or a bodily injury. §§12-4415(b) & 22-2908(2)(a) For a description of the diversion program, see §§12-4416 & 22-2909. Note: As part of a diversion program, a person may be required to operate motor vehicles equipped with **"ignition interlock"** devices.
[5]Note: General pre-sentence investigation requirements are codified under §§21-4603 and 21-4604.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**Yes Infraction** A fine of not more than **$500** §§21-3105(2) & 21-4503(4) Thirty dollars ($30) if a person pleads guilty or no contest under the uniform fine schedule. §8-2118(c)
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**No**
Administrative Licensing Action (Susp/Rev):	**Susp 1 yr** (Mandatory) §§8-255(b), §§8-256(a), 8-1001, 8-1002(a) & 8-1014(a)
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy below.
Imprisonment:	1st off (Cl B nonperson misd)-**48 con hrs to 6 mos**[1]; 2nd off (w/n 5 yrs) (Cl A nonperson misd)-**90 dys to 1 yr**; 3rd and subsequent offs (w/n 5 yrs) (Nonperson Felony)-**90 dys to 1 yr**[2] §§8-1567(d), (e), (f) & (k)(3) and 21-4502(1)(a) Important. For DWI sanctions related to the injury of a pregnant woman, see Miscellaneous Sanctions on p. 3-183.
Mandatory Minimum Term:	1st off-**48 con hrs**[1]; 2nd off (w/n 5 yrs)-**5 con dys** (or 48 con hrs (mand) and "work release" while in jail for the remaining 3 dys of the mand jail sentence); 3rd and subsequent offs (w/n 5 yrs)-**90 dys** (or 48 con hrs (mand) and "work release" while in jail for the remaining 88 dys of the mand jail sentence)[2] §8-1567(f) Note: Under §8-1567(g), for 2nd or sub. DWI (regular) offs, a person, who is sentenced to "house arrest," must, nevertheless, serve at least 48 con hrs of imprisonment. See Miscellaneous Sanctions on p. 3-183. Note: Under the DWI law, "imprisonment" includes "any restrained environment" under the control of a court and law enforcement agency. §8-1567(q)(2) However, incarceration for a felony DWI offense is not to be served in a facility operated by the State secretary of corrections. §21-4704(i)

[1]Under §§12-4415, 12-4416 or 22-2906 et seq. a defendant may enter a diversion program for a 1st off and have the DWI criminal charges dismissed after the program has been successfully completed.

[2]**Special Note:** The DWI law provides for different sanctions for a nonperson felony offense than are provided for in the State's sentencing guidelines grid. See Sentencing Guidelines on p. 3-183. However, under §21-4704(i), the sanctions in the DWI law prevail over those in the grid.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Mertz,* 907 P.2d 847 (Kan. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:	
Amount ($ Range):	1st off-**$200 to $500**; 2nd off (w/n 5 yrs)-**$500 to $1,000**; 3rd and subsequent offs (w/n 5 yrs)-**$1,000 to $2,500**[1] §8-1567(d), (e) & (f) See Footnote No. 2.
Mandatory Minimum Fine ($):	DWI Offenses-2nd off-**$500**[3] §21-3405b(b)(1)
Other Penalties:	
Community Service:	1st off-**100 hrs** (in lieu of imprisonment) §8-1567(d); ; 2nd and subsequent offs (w/n 5 yrs)-May be ordered in lieu of fine. A $5 credit is allowed on the fine for every hr of community service. §8-1567(i)
Restitution (eg Victim's Fund)	**Yes** (1) Direct compensation by defendants to victims as a condition of probation/parole. §§8-1019(c), 21-4603(2)(c), (d) & (e), 21-4610(4)(a) and 22-3717(l). And, (2) victims may also receive restitution for damages from the State's crime victims' compensation fund. The maximum amount that can be received from this fund is $25,000. §74-7301 et seq.
Other:	An "**ignition interlock**" device may be required. See Footnote No. 4 on p. 3-179 and Special Note Nos. 1 & 2 on p. 3-182. **Assessment.** Unless they are indigent, a defendant must pay an assessment of **$125**. This assessment is deposited into an alcohol and drug safety fund. §8-1008(e)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-180.
Administrative Per Se Law:	**Yes** ≥**0.08** (BAC/BrAC See Footnote No. 2 on p. 3-179.) §§8-1013(a) & (h), 8-1014(b) and 8-1015(a) 1st occurrence[4]-Susp **30 dys** (Mandatory) and **330 dys** restricted driving privileges (See Special Note Nos. 1 & 2 on p. 3-182.); sub. occurrence[4]-Susp **1 yr** (Mandatory) §§8-1001, 8-1002 & 8-1014(b) **Persons Under 21 Years Old.** ≥**0.02** (BAC/BrAC See Footnote No. 2 on p. 3-179.) 1st occurrence-Susp **30 dys**; sub. occurrence-Susp **90 dys** These suspensions appear to be mandatory. §8-1567a
Other:	**None**

[1]**Special Note:** This fine sanction is listed in the DWI law. However, §21-4503a(a)(3) provides for a possible fine of up to $100,000 for the conviction of a Severity Level 9 Felony offense.
[2]An "assessment" of $110 is levied against persons who are either convicted of a DWI offense or who enter a DWI diversion program. The "assessment" funds are used to support community-based alcohol and drug safety action programs. §8-1008(e)
[3]*State v. Kitzman,* 727 P.2d 491 (Kan. 1986)
[4]An "occurrence" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction. §8-11013(e)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): 1st off (occurrence)[1]-**Susp/Restriction**; sub. off (occurrence)[1]-**Susp** §§8-254, 8-1014(b), 8-1567(l) & 21-3405b(b)(4)

Term of License Withdrawal (Days, Months, Years, etc.): 1st off (occurrence)[1]-**30 dys susp** and **330 dys restriction**[2] See Special Note No. 1 below. sub off (occurrence)[1]-**1 yr** See Special Note No. 2 below. §§8-1014(c)(1) & (2) and 8-1567(d), (e) & (f)

Mandatory Minimum Term of Withdrawal: 1st off (occurrence)[1]-**30 dys**; sub off (occurrence)[1]-**1 yr** §8-255(b))

Special Note No. 1: (1) A person's driving privileges are restriced to operating a motor vehicle for educational, employment and medical purposes. (2) In lieu of restriced drving privileges, the court may require the person to operate only vehicles equipped with an "**ignition interlock**" device. §§8-292 & 8-1015

Special Note No. 2: For a 2nd or subsequent conviction where the offender had a BAC or BrAC ≥0.15, a defendant must be restricted to only operating vehicles that are equipped with and "**ignition interlock**" device. §8-1015(c) **Comment:** This requirement would appear to follow the mandatory suspension period noted above. As such, the offender would be entitled to full driving privileges but with the condition that they only operate vehicles equipped with "**ignition interlock**" devices.

Other:

Rehabilitation:

Alcohol Education: 1st and sub. offs-As a condition of probation, parole, etc., a defendant must complete either an alcohol education or treatment program. §8-1567(c), (d), & (e) Note: Attendance at an alcohol education or treatment program could be a condition for issuing a restricted license. §8-1015

[1]An "occurance" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction. §8-1013(e)
[2]The license is suspended for 30 days and thereafter restricted driving privileges are granted for 330 days. §§8-1014(c)(1) & 8-1567(d)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of alcohol or any drug or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). A person, operating a CMV with either an alcohol concentration ≥0.04 or while under the influence of alcohol or drugs, in addition to being subject to the regular DWI criminal sanctions, is subject to the following "special" sanctions: Jail for 48 consecutive hours to 6 months and/or a fine of $200 to $500. Note: Such a person may not be subject to administrative actions against their normal driving privileges. Also, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§8-1002, 8-2,128(b), 8-2,128(f), 8-2,128(h), 8-2,128(i), 8,128(s), 8-2,136, 8-2,137, 8-2,142 & 8-2,144

Sanctions Following a Conviction for a DWI Offense:
(continued)

Alcohol Treatment:	See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**License Plate Revocation.** For a 4th or subsequent DWI conviction, the license plate of the vehicle used in the offense may be revoked for 1 yr. §8-1567(p)
Miscellaneous Sanctions Not Included Elsewhere:	Under §21-4603b, a defendant may be sentenced to **"house arrest"**. The defendant may be required to use an electronic monitoring system while participating in a "house arrest" program. 2nd and sub DWI offenders must, nevertheless, serve at least 48 con hrs of imprisonment. §8-1567(g) **Injury to a Pregnant Woman.** It is a Severity Level 5 Person Felony to injure a pregnant woman while violating the DWI law. The sanctions for this offense are an imprisonment term of 50 to 55 mos and/or a fine of not more than $300,000. See Sentencing Guidelines below. §§21-3441, 21-4503a(a)(2) & 21-4704

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Involuntary Manslaughter-An unintentional death associated with a DWI or other driving offenses. Severity Level 4 Person Felony §21-3442 Vehicle Homicide-Death caused by the operation of a vehicle in a manner which causes unreasonable risk. Class A Person Misd §21-3405
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Severity Level 4 Person Felony-**62 to 69 mos**[1] See Sentencing Guidelines below. Class A Misd-Not more than **1 yr** §§21-4502 & 21-4704
Mandatory Minimum Term:	**None**

[1]For 2nd or 3rd convitions, the incarceration sanction may be increased by twice or three times these time periods respectively. §21-4504(a) & (b)

Sentencing Guidelines. Imprisonment sanctions for felony offenses are determined by a sentencing guidelines grid and supporting statutory provisions. For a Severity Level 9 Nonperson Felony, the grid provides for an imprisonment sanction of **7 to 9 mos** but, nevertheless, "presumes" that a non-incarceration sanction will be imposed. The imprisonment sanction can only be imposed if aggravating circumstances warrant. For a Severity Level 4 Person Felony, there is a "presumed" incarceration sanction of **62 to 69 mos**. These imprisonment periods, as listed in the grid, may be increased (by not more than twice the maximum sentence listed in the grid) depending upon the aggravating circumstances. However, if sufficient mitigating circumstances exist, the court may either decrease the imprisonment sentence or not impose an incarceration sanction. The grid also provides for increased incarceration periods for subsequent felony offenses. §§21-4704, 21-4716 & 21-4719

Other Criminal Actions Related to DWI: (continued)

Fine ($ Range):	Severity Level 4 Person Felony-Not more than **$300,000** §21-4503a(a)(2) Class A Misd-Not more than **$2,500** §21-4503(b)(1)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	DWI Related Involuntary Manslaughter-Susp[1] Vehicle Homicide-Rev §8-254
Length of Term of Licensing Withdrawal:	DWI Related Involuntary Manslaughter-Same as for DWI offenses. Vehicle Homicide-Not more than **1 yr** §8-256
Mandatory Action--Minimum Length of License Withdrawal:	DWI Related Involuntary Manslaughter-Mandatory suspensions are the same as for DWI offenses. Vehicle Homicide-**None** Restriced driving privileges may be granted. §8-254(b)
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	1st off (Cl B Nonperson Misd)-Not more than **6 mos**; 2nd off (Cl A Nonperson Misd)-Not more than **1 yr**; 3rd and subsequent off (Severity Level 9 Nonperson Felony)-**7 to 9 mos**[2] §§8-262, 21-4502 & 21-4704
Mandatory Minimum Term of Imprisonment:	2nd and sub. off-**5 dys**[3&4] §8-262(a)(3)

[1]Since this offense is DWI related, the suspensions are the same as for DWI offenses.
[2]See Sentencing Guidelines on p. 3-183.
[3]*State v. Harpool,* 788 P.2d 281 (Kan. 1990)
[4]A 90 dy jail term is mandatory if the person commits a DWI offense while driving on a suspended license where the suspension was for a previous DWI offense conviction. §8-262(a)(4) & Atty. Gen. Op 88-23 (Feb. 19, 1988)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: It is a Cl B misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term of not more than 6 mos and/or a fine of not more than $1,000. §§8-2,132(b) & (c), 21-4502(1)(b) and 21-4503(b)(2) In addition, for a violation of a CDL out-of-service order, a person is disqualified form operating a CMV for the following periods: 1st violation-90 dys; 2nd violation-1 yr; and, 3rd or subsequent violation-3 yrs. These disqualifications appear to be mandatory. §8-2,136(c)

Other Criminal Actions Related to DWI: (continued)

Fine ($ Range):	1st off-Not more than **$1,000**; 2nd off-Not more than **$2,500**; 3rd and subsequent off-Not more than **$100,000** §21-4503a(a)(3) and (b)(1) & (2)
Mandatory Minimum Fine:	**$100** appears to be mand. §8-262(a)(3)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp or rev** §8-262(b)
Length of Term of License Withdrawal Action:	The original suspension/revocation is extended for an additional period of **90 dys**. §8-262(b)
Mandatory Term of License Withdrawal Action:	See above.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §§8-284 & 8-285
Grounds for Being Declared an Habitual Offender:	Three serious offs within 5 yrs
Term of License Rev While Under Habitual Offender Status:	**3 yrs** §§8-286 & 8-288
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Severity Level 9 Nonperson Felony §8-287
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**7 to 9 mos**[1] §21-4704
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$100,000**[1] §21-4503a(a)(3)
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §22a-237 The tests' results may only be used for statistical purposes that do not reveal the identify of the deceased individuals. §22a-237(c) The law requires that the blood withdrawal occur w/n 8 hrs after arrest and that it be conducted on either an operator or "a person not a passenger". §22a-237(b)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** Note: A test is not required for persons under 14 years old.

[1]This sanction applies to offenses committed after 7/1/93. See Sentencing Guidelines on p. 3-183.

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1985) §§21-3610, 21-3610a, 41-102(p), 41-715, 41-727(a), 41-2701(h), & 41-2721(a)
Minimum Age (Years) Possession:	**21**[1] §§41-715, 41-727(a) & 41-2721(a) There is an employment exception.
Minimum Age (Years) Consumption:	**21**[1] §§41-727(a) & 41-2721(a)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** Note: For recent cases denying liability, see *Ling v. Jan's Liquors,* 703 P.2d 731 (1985) & *Meyers v. Grubaugh,* 750 P.2d 1031 (Kan. 1988).
Dram Shop Actions-Social Hosts:	**No** *Thies v. Cooper,* 753 P.2d 1280 (Kan. 1988)[2]
Other:	A licensee is not liable for the injuries sustained by an intoxicated patron who was under the legal drinking age. *Mills v. City of Overland Park,* 837 P.2d 370 (Kan. 1992)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Misd §41-715[3]
Term of Imprisonment:	Not more than **30 dys**[3] §41-715
Fine ($ Range):	**$100 to 250**[3] §41-715
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev**[4] §§41-314, 41-2611(f) & 41-2626
Length of Term of License Withdrawal:	Not specified in the statute **Civil Fine.** A "civil fine" on not more than **$1,000** may also be imposed. §41-328(a)

[1]Except for licensed establishments, persons under the legal drinking age for alcoholic beverages, containing 3.2% or less alcohol, may possess and consume such beverages if they have the consent of and are supervised by a parent or guardian. §§41-2704(e) & 41-2721

[2]This case concerned whether an employer was responsible for injuries caused by an employee who became intoxicated at a social event hosted by the employer. The court held that there was no liability.

[3]These sanctions, it appears, only apply to the service of alcoholic beverages containing more than 3.2% alcohol to intoxicated persons. §§41-102(b) & 41-715

[4]Appears only to apply to the service of alcoholic beverages containing more than 3.2% alcohol.

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	See the Special Note below.
Type of Criminal Action:	Cl B Person Misd (Furnishing alcoholic beverages to any person under 21 yrs of age) §§21-3610 & 21-3610a
Term of Imprisonment:	Not more than **6 mos** §21-4502(1)(b)
Fine ($ Range):	Not more than **$1,000**[1] §21-4503(2)(b)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	See the Special Note below.
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or Rev** §§41-2611(f), 41-2626 & 41-2708(a)
Length of Term License Withdrawal:	Not specified for alcoholic beverages with an alcoholic content of more than 3.2%. For cereal malt beverages (alcoholic beverates with an alcoholic content below 3.2%), license revocation for 6 mos.
Anti-Happy Hour Laws/Regulations:	**Yes** §§41-2640(a)(3) & 41-2722(a)(4)
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §8-1599
Anti-Consumption Law (Yes/No):	**Yes (Limited)**[2] Driver and passengers §41-719(a)

[1]There is a mand. min. fine of $200. §§21-3610 & 21-3610a(b)

[2]The law only applies to the consumption of alcoholic beverages which have an alcoholic content >3.2% alcohol by wgt. I.e., the law does not prohibit the consumption of cereal malt beverages which have an alcoholic content ≤3.2% alcohol by wgt.

Special Note: It is a misdemeanor for a "liquor by the drink" licensee to allow a person under 21 years old to consume either alcoholic liquor or cereal malt beverages on the licensed premises. The sanctions for this offense are a jail term on not more than 30 dys, a fine of from $100 to $250, a "civil fine" of not more than $1,000 and/or license suspension/revocation. §§41-2601(f), 41-2615, 41-2626 & 41-2633a(a)

STATE:	**KENTUCKY**
General Reference:	Kentucky Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the Influence of Alcohol §189A.010(1)(b)[1]
Illegal Per Se Law (BAC/BrAC):	**≥0.10**[2&3] §§189A.010(1)(a)[1] & 189A.005(1) Persons Under 21 Years Old. **≥0.02 but <0.10**[3] §189A.010(1)(e)[4] & (6)[1]
Presumption (BAC):	**None**[5]
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Substance** or (2) a combination of alcohol and any substance which may impair one's driving ability §189A.010(1)(c) & (d)[1]
Other:	For Commercial Motor Vehicle Operators, see p. 3-193.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §§189A.100 & 281A.230 (Commercial Motor Vehicle Operators)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §189A.103(1)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §189A.103(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *Commonwealth v. Hager,* 702 S.W.2d 431 (Ky. 1986)
Other Information:	The law provides that no person shall be compelled to submit to a chemical test. However, if a person has been arrested for any DWI offense related to either a death or physical injury, the law allows a court to issue a search warrant requiring that either a blood or a urine sample be obtained for chemical testing. §189A.105 & *Combs v. Commonwealth,* 965 S.W.2d 161 (Ky. 1998) **Special Note:** If a person has an alcohol concentration >0.15, they must be detained at least 4 hrs following their arrest. §189A.110

[1]The DWI provisions of Chapter 189A apply only to the operation of "motor vehicles". For DWI offenses concerning the operation of certain vehicles that are "not motor vehicles", see §§186.010, 186.560(1)(b) & (5), 189.520 and 189.990(1).
[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.
[3]Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §§189.005(1) & 189A.005(1)
[4]The law, that establishes a special offense against persons <21 yrs old, who operate a motor vehicle with BAC/BrAC ≥0.02 but <0.10, was held not to violate a persons's Federal or State constitutional rights to equal protection of the law. *Commonwealth v. Howard,* 969 S.W.2d 700 (Ky. 1998)
[5]Sec. 189.520(3)(c) establishes a statutory presumption of operating a vehicle that is "not a motor vehicle" while under the influence of alcohol if the operator has a BAC/BrAC ≥0.10 (See Footnote No. 3 above.).

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §189A.103(1)
Urine:	**Yes** §189A.103(1)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Yes** Plea bargaining is not allowed if either one of the three following conditions exist: (1) Either a defendant ≥21 yrs old a BAC/BrAC ≥**0.10**, (2) a defendant <21 yrs old a BAC/BrAC ≥**0.02** or (3) a defendant refused to submit to a chemical test under the implied consent law. Does not apply if the State's witnesses are unavailable for trial or the chemical test results are in error. The court must record the reasons for any change in the original charges. §189A.120
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No** Note: A DWI offender must undergo an alcohol assessment as part of their mandatory alcohol education or treatment program. §189A.040

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st Refusal-**Susp 6 mos**; 2nd Refusal (w/n 5 yrs)-**Susp 18 mos**; 3rd Resusal (w/n 5 yrs)-**Susp 36 mos**; 4th and Sub. Refusals (w/n 5 yrs)-**Susp 60 mos** These suspensions are **mandatory**. No hardship license can be issued by the court. §§189A.107 & 189A.410(2)
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note below.
Imprisonment:	1st off (Cl B misd)-**48 hrs to 30 dys**[1]; 2nd off (w/n 5 years) (Cl A misd)-**7 dys to 6 mos**[1]; 3rd off (w/n 5 years) if **BAC <0.18** (Cl A misd)-**30 dys to 12 mos**; 3rd off (w/n 5 yrs) if **BAC ≥0.18** (Cl D Felony)-**1 to 5 yrs**; 4th and subsequent off (w/n 5 yrs) (Cl D Felony)-**1 to 5 yrs** §§189A.010(4), 532.020 & 532.060 Persons Under 21 Years Old. **≥0.02 but <0.10-None**
Mandatory Minimum Term:	1st off-**48 hrs/2 dys**[1&2]; 2nd off (w/n 5 years)-**7 dys** (with 48 con hrs)[1]; 3rd off (BAC <0.18)-**30 dys** (with 48 con hrs); 3rd off (BAC ≥0.18)-**1 yr**[3] (with 48 con hrs); 4th and subsequent offs-**120 dys** (with 48 con hrs) §189A.010(4)(a), (5), (7) & (8) **Important.** A person, who has been convicted of a misdemeanor, may be able to serve the mandatory jail sanction via "home incarceration". §532.210
Fine:	
Amount ($ Range):	1st off-**$200 to $500**[2]; 2nd off (w/n 5 years)-**$350 to $500**; 3rd off if **BAC <0.18-$500 to $1,000**; 3rd off if **BAC ≥0.18-$1,000 to $10,000** 4th and subsequent offs-**$1,000 to $10,000** §§189A.010(4) & 534.030 Persons Under 21 Years Old. **≥0.02 but <0.10-$100 to $500** §189A.010(5) See Community Service below.
Mandatory Minimum Fine ($):	**None**[2]
Other Penalties:	
Community Service:	1st off-**48 hrs to 30 dys**[2]; 2nd off (w/n 5 years)-**10 dys to 6 mos**; 3rd offs (w/n 5 years) (**BAC <0.18)-10 dys to 12 mos** §189A.010(4) Persons Under 21 Years Old. **≥0.02 but <0.10-20 hrs** in lieu of a fine 189A.010(5)
Restitution (eg Victim's Fund)	**Yes** §348.020 a victim's compensation board (See also §346.010 et seq.) Also, the court may order a defendant to pay restitution directly to a victim as a condition of probation. §533.030(3)
Other:	**Service Fee.** A DWI offender must pay a **$150** service fee in addition to any other fine. §189A.050. **Assessment.** In addition to any fine, an offender must pay a special assessment of **$20** which is deposited into the Traumatic Brain Injury Trust Fund. §189A.101(10)

[1]**Weekend Confinement.** For either a 1st or 2nd offense, a defendant, except for any mandatory 48 hr jail term that has to be served, may be allowed to serve their imprisonment term on weekends provided they spend at least 24 hrs in confinement. §189A.030.
[2]For a 1st off, a defendant must be sentenced to one of the following sanctions: (1) 48 hrs in jail; (2) a $200 fine; or (3) 48 hrs of community service. For a 1st off, if the **BAC ≥0.18**, a defendant must be sentenced to **7 dys** in jail; however, 5 dys of this sentenced may be probated. §189A.010(4)(a) & (6)
[3]**Comment:** The drunk driving law does not specifically provide for this mand 1 yr sentence. However, it does provided, that for any 3rd off (w/n 5 yrs), the minimum sentence cannot be suspended, probated or conditionally discharged. The minimum sentence for a Cl D felony is not less than 1 yr. §§189A.010(7) & 532.060(2)(d)

Special Note: A person, who had been convicted of an illegal per se offense, can have their sanctions enhanced based on prior driving while under the influence offenses which were committed before the enactment of the illegal per se law. The Kentucky Supreme Court has held that the consideration of these prior driving under the influence offenses for the purpose of sanction enhancement does not violate the *ex post facto* provisions of either the Federal or State constitutions. *Botkin v. Commonwealth,* 890 S.W.2d 292 (Ky. 1994)
Historical Note: The above decision replaced a previous unpublished (not to be cited as precedent) opinion that had reached the opposite conclusion. *Botkin v. Commonwealth,* 1994 Ky. LEXIS 93

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)	**Crimes Victims' Fund.** An offender must pay a cost of **$10** which is used to finance the Crimes Victims' Compensation Fund. §346.185 **Incarceration Costs.** An offender may be required to reimburse the State or local government for any incarceration costs. §532.____ (§178 of 1998 Acts Chapter 606)
Administrative Licensing Actions:	See the Special Note below.
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	I. A court may suspend a driver's license from 14 to 60 dys following a DWI arrest but prior to adjudication of the DWI charges if there is probable cause that the defendant committed such off and any one of the following circumstances is present. (1) The driver has prior traffic violations (including DWI offs) which demonstrate a lack of regard for the safety of others or (2) there was an accident involving physical injury associated with the DWI charge. If the defendant is convicted of the DWI charge, any susp time is credited towards their license rev following such conviction. §189A.060 II. At arraignment, a court shall suspended the driver's license of (1) a person who has refused to submit to a chemical test or (2) an offender who has either a prior DWI offense conviction or a prior refusal. Except in cases of a refusal to submit to a chemical test, a driver's license is returned to an offender either after an acquittal of the DWI offense or, if the case has not been concluded, after a period of time that cannot exceed the period of time a person's license would have been revoked if they had been convicted of a DWI offense. This action appears to be mandatory. Any suspension period imposed under this procedure will be credited against any revocation imposed for a DWI offense conviction. §189A.200 & *Com. v. Raines,* 847 S.W.2d 724 (Ky. 1993) Note: This action does not apply to persons <21 yrs old who operate a motor vehicle with a BAC/BrAC of ≥0.02 but <0.10.
Post DWI Conviction Licensing Action:	See the Special Note below.
Type of Licensing Action (Susp/Rev):	1st and subsequent offs-**Rev** §189A.070(1) For persons under 18 years old, see Footnote No. 1. Persons Under 21 Years Old. **≥0.02 but <0.10-Susp** §189A.010(5)

[1]Under §189A.070(4), a person, who is under 18 years old, has their license revoked until they are 18 or as otherwise provided under §189A.070 whichever sanction will result in the longer revocation period.

Special Note: Based upon the same factual situation, a person, who has been convicted of a drunk driving offense may also be subsequently subjected to a license revocation via administrative action by the Transportation Cabinet. The courts have held that such licensing action does not violate the constitutional prohibition against double jeopardy. See, for example, *Transportation Cabinet v. Feige,* 889 S.W.2d 52 (Ky.App. 1994). In addition, based upon the same factual situation, a person, who has been subjected to judicially ordered licensing prior to a DWI trail could also be subsequently prosecuted for a drunk driving offense without violating the constitutional prohibition against double jeopardy. *Hourigan v. Com.,* 962 S.W.2d 860 (Ky. 1998)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**90 dys**; 2nd off-**12 mos**; 3rd off-**24 mos**; 4th and sub. off-**60 mos** §189A.070 See Habitual Traffic Offender Law on p. 3-195. Persons Under 21 Years Old. ≥**0.02 but <0.10-30 dys to 6 mos** §189A.010(5)
Mandatory Minimum Term of Withdrawal:	1st off-**30 dys** mand followed by 60 dys of restricted driving privileges (§189A.410); 2nd off-**12 mos**; 3rd off-**24 mos**; 4th and sub. off-**60 mos** §189A.070 Persons Under 21 Years Old. ≥**0.02 but <0.10-30 dys**[1] §189A.010(5) **Special Note:** A driver's license cannot be reinstated following a revocation for a DWI offense until the defendant completes the required alcohol education or treatment program under §189A.040.
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** 1st off-Participation in either an alcohol education or treatment program for 90 dys is mandatory. §189A.040(1)
Alcohol Treatment:	For subsequent DWI off convictions, the defendant must be sentenced to an alcohol or substance abuse treatment program for 1 yr. §189A.040(2) & (3)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	

[1]**Comment:** This sanction appears to be mandatory but the law is not clear on this point.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) have refused to submit to a chemical test for either alcohol or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). A person, who operates a CMV with a BAC/BrAC ≥0.04 but ≤0.08 is subject to a fine of not less than $20 and not more than $50. However, if their BAC/BrAC is >0.08, they are subject to the same fines as for a regular drunk driving offense. In addition, a CMV operator who has any measurable (or detectable) amount of alcohol or controlled substance in their system must be placed "out-of-service" for 24 hours. If a CMV operator refuses to submit to a chemical test (for an alcohol concentration or for the presence of other drugs) under the CMV implied consent law provisions, the operators privilege to operate a CMV can be either suspended or revoked. For first refusal, the CMV privilege is suspended for one (1) year (mand) and, for a subsequent refusal, the privilege is suspended for life (mand). However, if the operator fails to appear at the implied consent hearing, which is automatically scheduled in refusal situations, the CMV privilege is revoked; the length of this revocation is not specified. Note: The pre-trial and implied consent provisions of Ch. 189A also apply to CMV operators (§281A.220(2)). §§281A.010(2), (8), (10) & (11), 281A.190, 281A.210, 281A.220 and 281A.____ (§1 1998 Acts Chapter 446)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**Reimbursement.** If a person is placed on probation or given conditional release from incarceration, the court may require them to make payment to either an education or treatment program for drug or alcohol abuse. The amount of this payment is not to exceed the amount of any fine which could have been imposed for the offense. §533.030(5)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**No** **Special Note:** "A person is guilty of manslaughter in the second degree when, including, but not limited to, the operation of a motor vehicle, he wantonly causes the death of another person." §507.040(1) Manslaughter in the second degree is a Cl C felony. §507.040(2) The sanctions for this felony are imprisonment from **5 to 10 yrs** and/or a fine of **$1,000 to $10,000**. §§532.060(2)(c) & 534.030(1)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	
Mandatory Minimum Term:	
Fine ($ Range):	
Mandatory Minimum Fine:	
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Note: Even though this state does not have vehicle homicide statute, it, nevertheless provides for mandatory license rev for not less than 5 years for a conviction of manslaughter[1] resulting from the operation of a motor vehicle. §186.560(1)(a) & (4)
Length of Term of Licensing Withdrawal:	
Mandatory Action--Minimum Length of License Withdrawal:	
Other:	

[1]This could include either (1) manslaughter in the second degree (§507.040) or reckless homicide (§507.050). Note "reckless homicide" is a Cl D felony. The sanctions for a Cl D felony are an imprisonment term of 1 to 5 yrs and a fine of $1,000 to $10,000. §§532.060(2)(d) & 534.03091)

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	1st off (Cl B misd)-Not more than **90 dys**[1]; 2nd off (Cl A misd)-Not more than **12 mos**[1]; 3rd and subsequent offs (Cl D felony)-**1 to 5 yrs**[1] §§189A.090(2), 532.060 & 532.090
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	1st off-Not more than **$250**; 2nd off-Not more than **$500**; 3rd and subsequent offs-**$1,000 to $10,000** §§534.030 & 534.040
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	1st off-**Rev**; 2nd off-**Rev**; 3rd and subsequent offs-**Rev** §189A.090
Length of Term of License Withdrawal Action:	The driver's license shall be revoked for twice the original period of rev §189A.090(3)
Mandatory Term of License Withdrawal Action:	**Yes** As indicated above.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §186.641 et seq.
Grounds for Being Declared an Habitual Offender:	**3 or more serious offs** (including DWI offs) or **15 moving violations** (including serious offenses) §§186.641 & 186.642
Term of License Rev While Under Habitual Offender Status:	**Rev-5 yrs** if habitual offender status is related to 3 convictions of either DWI or vehicle manslaughter; **rev-2 yrs** if habitual offender status is based on other violations. §186.646
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Misd** §§186.992 & 431.060(2)

[1]Under §500.095, a defendant can be assigned community service in lieu of incarceration.

Special Note: A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. §281A.090(2) However, neither this section nor any other provision of Chapter 281A provide a sanction for this prohibition. However, except as noted above for driving while suspended or revoked for a drunk driving offense, it is a Cl B misd for a person to operate a motor vehicle while their license is either suspended, revoked or withdrawn; the sanctions for this offense are a jail term of not more than 90 dys and/or a fine of not more than $250. §§186.620(2), 186.990(3), 532.090(2) & 534.040(2)(b)

Other Criminal Actions Related to DWI: (continued)

Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not to exceed **12 mos** §186.992 See Footnote No. 1 on p. 3-195.
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**None**
Mandatory Minimum Fine ($):	**N/A**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Possible**[1]
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Possible**
Vehicle Passengers:	**Possible**
Pedestrian:	**Possible**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** §§244.080 & 244.085 (Year Eff: 1938)
Minimum Age (Years) Possession:	**21** §244.085 There is a limited employment exemption. §244.087
Minimum Age (Years) Consumption:	**None**
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes**[2] §413.241
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Pike v. George,* 434 S.W.2d 626 (Ky. 1968), *Grayson v. Frat. Order of Eagles,* 736 S.W.2d 328 (Ky. 1987), & *Watts v. K, S & H,* 957 S.W.2d 233 (Ky. 1997)[3]

[1]Language in §189.590 requiring coroners to report on the circumstances surrounding fatal accidents may impliedly require such tests. *Woosley v. Central Uniform Rental,* 463 S.W. 2d 345 (1971) An investigative officer or a coroner may direct the taking of blood samples from dead individuals if necessary. OAG 73-170 & OAG 73-196

[2]This law limits liability if the service of alcoholic beverages was to a person over the legal drinking age. A licensee or any employee thereof is not liable for the actions of a patron "unless a reasonable person under the same or similar circumstances should know that the person served is already intoxicated at the time of serving." The law does not appear to have abrogated the holding in the *Pike* case since it concerned the damages caused if the service of alcoholic beverages was to a minor.

[3]In *Watts*, the court held that a licensee may be held liable for the actions of a minor who consumed alcoholic beverages that were purchased by another under age person if it can be shown that it was reasonably foreseeable that such beverages would be consumed by the non purchasing minor who could become intoxicated and injure a third party.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:	**No**[1]
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	1st off-**Cl B Misd**; 2nd and subsequent off-**Cl A Misd** §§241.010(2), 244.080(2) & 244.990(1)
Term of Imprisonment:	1st off-Not more than **90 dys**; 2nd and subsequent off-Not more than **12 mos** §532.090 See Footnote No. 1 on p. 3-195.
Fine ($ Range):	1st off-Not more than **$250**; 2nd and subsequent off-Not more than **$500** §534.040
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or Rev**[2] §§243.480, 243.490 & 243.500
Length of Term of License Withdrawal:	**2 yrs** §243.100(5)
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	1st off-**Cl B Misd**; 2nd and subsequent off-**Cl A Misd** §§241.010(2), 244.080(1) & 244.990(1)
Term of Imprisonment:	1st off-Not more than **90 dys**; 2nd and subsequent off-Not more than **12 mos** §532.090 See Footnote No. 1 on p. 3-195.
Fine ($ Range):	1st off-Not more than **$250**; 2nd and subsequent off-Not more than **$500** §534.040
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or Rev**[2] §§243.480, 243.490 & 243.500
Length of Term License Withdrawal:	**2 yrs** §243.100(5)

[1]See the "caveat" in the *Grayson* case 736 S.W.2d at 335.

[2]Note: For a first violation, in leiu of revocation, the State may suspend a license. The licensee, however, as an alternative to this suspension, may at their discretion pay a fine. For retail "by the drink" and package liquor licensees, the fine is $50 per day the license would have been suspended; for retail beer licensees, such fine is $25 per day. §243.480(1) For a second violation (w/n 2 yrs), the license must be revoked or suspended. §243.500(4)

Other State Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Driver & passengers §222.202 The law states that no person "...shall drink an alcoholic beverage in a public place or in or upon any passenger coach, or other vehicle commonly used for the transportation of passengers...."

STATE:	**LOUISIANA**
General Reference:	West's Louisiana Statutes Annotated: Revised Statutes Note: Citations are to the Revised Statutes unless otherwise stated.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic beverages[1] §14:98(A)(1)(a)
Illegal Per Se Law (BAC):	≥**0.10**[1&2] §14:98(A)(1)(b) For Persons Under 21 Years Old. ≥**0.02**[2&3] §14:98.1(A)
Presumption (BAC):	≥**0.10**[2] §32:662(A)(1)(c) For Persons Under 21 Years Old. ≥**0.02**[2] §32:662(A)(1)(d)
Types of Drugs/Drugs and Alcohol:	Under the influence of **Any Controlled Dangerous Substance**[1] as set forth in schedules I thur V of §40:964. §14:98(A)(1)(c)
Other:	For Commercial Motor Vehicle Operators, see below. See School Bus Operators below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §32:661
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §32:661(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes**[4] (Criminal cases only; prohibited in civil cases except admin. lic. actions) §32:666(A)(3)
Other Information:	Under §32:666(A), a driver, who is under arrest for any DWI offense, may not refuse to submit to a chemical test if they have been involved in a traffic fatality or accident resulting in a serious bodily injury. A law enforcement officer may direct that a chemical test be performed (i.e., that a blood sample be obtained). Such a test (or sample) may be performed (or obtained) even without the consent of the driver. *State v. Hebert,* 559 So.2d 821 (La.App. 3 Cir. 1990)

[1]Note: All DWI offenses are classified as the crime of operating a vehicle while intoxicated.
[2]Standard: Percent by wgt. based on grams of alc. per 100 cubic centimeters of blood. §§14:98(A)(1)(b), 14:98.1(A) and 32:662(A)(2)
[3]This offense is defined as "[t]he crime of operating a motor while intoxicated is operating a motor vehicle ... when the operator's blood alcohol concentration is 0.02 percent or more by weight...." §14:98.1(A) Note: If the person's alcohol concentration is ≥0.10, they must be charged under the regular illegal per se law. §14:98.1(B)
[4]Refusal to submit to a field sobriety test can also be admitted into evidence a DWI trial. *State v. Washington,* 498 So.2d 136 (La.App. 5 Cir. 1986)
DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" form (i.e., their CDL is suspended, revoked or cancelled for) operating a CMV for minimum period of 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). It is a criminal offense (1) to operate a CMV with BAC/BrAC/UrAC ≥0.04 or while under the influence of alcohol/controlled substance or (2) to refuse to submit to a chemical test. The sanctions for this offense are a jail term of not more than 6 mos and a fine of $10 to $5,000; there is also a civil penalty of not more than $2,500. In addition, a CMV operator, who has (1) any "measured amount of alcohol concentration" or (2) a "detected presence" of either alcohol or controlled substance their system, must be placed "out-of-service" for 24 hours. §§32:401(4) & (5), 32:414.2 & 32:427(A)(2)
School Bus Operators. A person, who either tests positive for the presence of marijuana, opioids, amphetamines, phencyclidine or other controlled dangerous substance per §40:961(7) or has an alcohol concentration ≥**0.08**, must be prohibited by public education authorities from operating a school bus. §17:491.2(A)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §32:661
Urine:	**Yes** §32:661
Other:	Other bodily substance §32:661

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**[1]
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Optional** §14:98(G) Persons <21 yrs old charged with driving with an alcohol concentration ≥0.02. §14:98.1(E)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal-**Susp 180 dys** (90 dys mand except in situations where the use of an ignition interlock device has been authorized. Otherwise, a hardship license may be issued after the 90 dys mand period.); 2nd or sub refusal (w/n 5 yrs) or a any refusal related to either a fatality or serious bodily injury-**Susp 545 dys** (mand except in situations where the use of an ignition interlock device has been authorized.) §§32:667(B)(2), 32:668(B)(1), (2), & (3) and 32:378.2(A)(2)(a)(iii) and *Dixon v. Department of Public Safety and Corrections,* 570 So.2d 130 (La.App. 3 Cir. 1990), *Schott v. Dept. of Public Safety,* 556 So.2d 999 (La.App. 3 Cir. 1990), & *Chalker v. Dept. of Public Safety & Corr.,* 593 So.2d 948 (La.App. 4 Cir. 1992) Refusal by Persons Under 21 Years Old. Susp for **180 dys** (90 dys mand) §§32:667(B)(2) & 32:668(B)(1)(b) A person may be issued restricted driving privileges for **all** of the suspension period if their motor vehicles are equipped with "ignition interlock" devices. §32:378.2(A)(2)(a)(iii)
Other:	**None**

[1]**Special Note and Comment:** Code of Criminal Procedure Article 892.1(C) & (E) allows a court to dismiss a misdemeanor traffic offense committed under Title 32, the traffic regulation code, provided the defendant has completed a driver improvement program and has not participated in such a program w/n 2 yrs. However, drunk driving offenses are placed in Title 14 which is the criminal law. As a result, it would appear that dismissal of a DWI charge is not authorized under this criminal procedure provision.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Notes, DWI Related Injury and Double Jeopardy below. Important: See Persons Under 21 Years Old on p. 3-203.
Imprisonment: Term (Day, Month, Years, Etc.):	1st off-**10 dys to 6 mos**; 2nd off (w/n 10 yrs)-**30 dys to 6 mos**; 3rd off-misd/felony (w/n 10 yrs) (See Footnote No. 1 on p. 3-205.)-**1 to 5 yrs** (with or without hard labor); 4th off-felony (w/n 10 yrs)-**10 to 30 yrs** (w/hard labor) §14:98
Mandatory Minimum Term:	1st off-(10 dys)[1]; 2nd off (w/n 10 yrs)-**48 hrs**[2]; 3rd off-(w/n 10 yrs)-**6 mos**[3]; 4th off-(w/n 10 yrs)-**2 yrs**[4] §14:98 See Miscellaneous Sanctions on p. 3-204.
Fine: Amount ($ Range):	1st off-**$300 to $1,000**; 2nd off (w/n 10 yrs)-**$750 to $1,000**; 3rd off (w/n 10 yrs)-**$2,000**; 4th off (w/n 10 yrs) felony-**$5,000** §14:98 See Footnote No. 5.

[1]If an offender is placed on probation, the following alternatives may be imposed in lieu of the mandatory sentence. (1) Serve a minimum of 2 dys in jail and participate in substance abuse and driver improvement programs or (2) perform at least four eight-hr dys of community service (half of which must be litter abatement or a collection program) and participate in substance abuse and driver improvement programs. §14:98(B)

[2]This sentence is "without benefit of parole, probation, or suspension of sentence." However, home incarceration is possible. The remainder of the sentence is subject to suspension with probation under the following conditions: (1) Serve a minimum of 15 dys in jail and participate in substance abuse and driver improvement programs or (2) perform at least 30 eight-hr dys of community service (half of which must be litter abatement or a collection program) and participate in substance abuse and driver improvement programs. §14:98(C)

[3]If probation is granted for part of the sentence, the defendant must participate in substance abuse and driver improvement programs. However, 6 mos of the sentence is mandatory. §14:98(D)

[4]Three (3) yrs mand. if the defendant has participated in either a substance abuse or driver improvement program for a 3rd offense. Two (2) yrs mand. if the defendant has participated in either a substance abuse or driver improvement program for a 1st or 2nd (but not a 3rd) offense. §14:98(E)

[5]Defendants must also pay a fee of not less than $50 for felony convictions or one of $7.50 for misdemeanor convictions, this fee is deposited in the State Treasury for the purpose of funding the crime victims reparations fund. §46:1816(D)(1)(a)

Special Note No. 1: For the purpose of sanction enhancement, a prior drunk driving offense includes drunk driving related injury and homicide offenses. §14:98(F)

Special Note No. 2: The time periods used to determine whether enhanced sanctions will be imposed on 2nd or subsequent offenders are not the same for criminal sanctions (jail or fine) and for administrative ones (license suspensions). In order to impose enhanced criminal sanctions based on prior DWI offenses, the prior offenses all must have occurred within 10 yrs of the present offense. In order to impose enhanced administrative sanctions based on prior DWI offenses, the prior offenses all must have occurred within 5 yrs of the present offense. Note: Enhanced licensing sanctions for subsequent administrative per se violations are also based whether the prior violations occurred within 5 yrs of the present violation.

DWI Related Injury. I. A person is guilty of "vehicular negligent injuring" if they injure another, while operating motor vehicle either while under the influence of an alcoholic beverage/controlled dangerous substance or with an alcohol concentration ≥0.01. The sanctions for this offense are imprisonment for not more than 6 mos and/or a fine of not more than $1,000. §14:39.1 II. A person is guilty of "first degree vehicular negligent injuring" if they seriously injury another, while operating motor vehicle either while under the influence of an alcoholic beverage/controlled dangerous substance or with an alcohol concentration ≥**0.08**. The sanctions for this offense are imprisonment (with or without hard labor) for not more than 5 yrs and/or a fine of not more than $2,000. §14:39.2

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the admin. per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Butler v. Department of Pub. Safety & Corrections,* 609 So.2d 790 (La. 1992), & *State v. Sonnier,* 679 So.2d 1011 (La.App. 3 Cir. 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	See Footnotes Nos. 1 & 2 on p. 3-201.
Restitution (e.g. Victim's Fund)	**None**[1]
Other:	**Chemical Test Fee.** A DWI offender must pay a fee of $75 for the purpose of covering the costs of administering a BAC chemical test. They also must pay a fee of $50 to defray the expenses of admistering any conditions of probation or incarceration. Code of Criminal Procedure §887(C) & (D) **Child Endangerment.** A DWI offender is subject to the following mandatory sanctions if a child 12 years old or younger was a passenger in a vehicle driven by the offender at the time of the offense: 1st off-**10 dys** jail/**$125** fine; 2nd off-**30 dys** jail/**$300** fine; 3rd off-**6 mos** jail; 4th off-**2 yrs** jail §14:98(J)
Administrative Licensing Actions:	See Special Note No. 2 and Double Jeopardy on p. 3-201.
Pre-DWI Conviction Licensing Action:	See the Special Note below.
Administrative Per Se Law:	**Yes** BAC ≥**0.10** (≥**0.02** For Persons under 21 Years Old) BAC is based upon percent by wgt. of alc. in the blood. 1st Off-Susp for **90 dys** (30 dys mand[2], except in situations where the use of an ignition interlock device has been authorized, followed by 60 dys of restricted driving privileges.[3]); 2nd and sub offs (w/n 5 yrs)-**Susp for 365 dys** (mand except in situations where the use of an ignition interlock device has been authorized)[4] §§32:667(B)(1) & (3), 32:668(B)(1)(c) & (3) and 32:378.2(2)(a) Persons Under 21 Years Old. Susp for **90 dys/180 dys**[5] (30 dys mand) A person may issued restricted driving privileges without having to serve a mandatory period of license suspension if they agree to operate motor vehicles equipped with an **ignition interlock device**. §§32:667(B)(1) & (3), 32:668(B)(1)(b), (1)(c) & (3) and 32:378.2(2)(a)

[1]A victim of a motor vehicle accident is not eligible for State compensation unless the crime, which caused either the injury or the death, was intentional. §46:1805(B)

[2]Thirty (30) mandatory except as per the *Noustens* case cited in Footnote No. 3. *Corley v. Dept. of Public Safety & Corr.*, 648 So.2d 936 (La.App. 1 Cir. 1995)

[3]When a person has been convicted of a 1st DWI off and is subject to the admin. per se law, a district court may issue a restricted hardship license for the entire 90 day period under §32:415.1 notwithstanding the provisions of the admin. per se law that require a 30 day mandatory suspension period. *Noustens v. State,* 524 So.2d 235 (La.App. 5 Cir. 1988) (cert./review denied by the Louisiana Supreme Court, 531 So.2d 476 (La. 1988)) However, with the exception of the use of an **ignition interlock device**, a person with 2 admin. per se violations w/n 5 yrs is generally ineligible for restricted driving privileges. *Hauck v. Dept. of Public Safety & Corr.*, 597 So.2d 493 (La.App. 1 Cir. 1992), & *McLean v. Dept. of Public Safety & Corr.*, 572 So.2d 1066 (La.App. 5 Cir. 1990)

[4]See *Murphy v. State Through DPS,* 640 So.2d 546 (La.App. 3 Cir. 1994).

[5]Apparently due to a legislative oversight, §32:667(B)(1) was amended to provide for 90 and 180 dy suspension periods. §3 of H.B. 520 and §1 on H.B. 521 enacted in 1997 Note: These were signed into by the governor on 7/15/97.

Special Note: The administrative per se law does not violate a person's constitutional right to due process of law. *Butler v. Department of Pub. Safety & Corrections,* 609 So.2d 790 (La. 1992)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	Under §32:414(E)(1) & (F)(2), a person's license may be susp, cancelled or revoked for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., 2nd off DWI). The law does not specifically state that licensing action can be taken without a preliminary hearing. However, other provisions would seem to indicate that a preliminary hearing is not required. **Comment:** Such action could occur prior to a conviction.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	1st & subsequent offs-**Susp**[1] §§32:401(18), 32:414 & 32:430
Term of License Withdrawal (Days, Months, Years, etc.):	1st off[2]-**90 dys** (hardship driving privileges are available) For Persons under 21 Years Old-**180 dys** (hardship driving privileges are available); 2nd off[2] (w/n 5 yrs)-**12 mos**; 3rd & or subsequent offs[2] (w/n 5 yrs)-**24 mos** §§32:414, 32:415 & 32:415.1 See Footnote No. 1.
Mandatory Minimum Term of Withdrawal:	1st off[2]-**None**[3] (hardship/restricted driving privileges are available); 2nd offs[2] (w/n 5 yrs)-**12 mos** (mand except in situations where the use of an ignition interlock device has been authorized[3]); 3rd and sub offs[2] (w/n 5 yrs)-**24 mos** (mand except in situations where the use of an ignition interlock device has been authorized[3]) See Special Note No. 2 on p. 3-201.

[1]I. Sec. 32:430(A)(1) & (C) provides for the following licensing actions for persons who are at least 13 but not more than 19 yrs old and who are convicted of any crime related to the possession, use or abuse of alcohol or a "controlled dangerous substance". For a 1st off, suspension from 90 dys up to 1 yr or until the person reaches 17 whichever is the longer suspension period; for a 2nd or subsequent offense, revocation for 1 yr or until the person reaches 19 whichever is the longer revocation period. For 1st offenders only, after the first 30 dys of the susp. period, restricted hardship driving privileges are available. §32:430(E), (F) & (G)
II. Sec. 32:430(A)(2) & (E) provides for the following licensing actions for persons who are 19 yrs old and who are convicted of any crime related to the possession, use or abuse of a "controlled dangerous substance" must have their license suspension from 90 dys to 1 yr. Again, as above, for 1st offenders only, after the first 30 dys of the susp. period, restricted hardship driving privileges are available. §32:430(E), (F) & (G)
Note: Sec. 32:401(20) defines "drug offense" to include driving while under the influence of a controlled substance.
Comment: The issuance of hardship driving privileges under this section appears to conflict with §32:415.1 which provides for no 30 dy waiting period.
[2]Includes vehicular negligent injuring under §14:32.1.
[3]Notwithstanding other provisions of law, restricted driving privileges are available at any time to offenders who have been placed on probation and agree to only operate motor vehicles equipped with **ignition interlock devices**. §§15:306(A), 32:378.2

Persons Under 21 Years Old. It is illegal for a person <21 yrs old to operate a motor vehicle with an alcohol concentration ≥0.02. The sanctions for this are as follows: 1st offense-A fine of **$100 to $200** and participation in a substance abuse and driver improvement program; and 2nd or subsequent offense-Imprisonment for **10 dys to 3 mos** and a fine of **$150 to $500**. The sanctions for a 2nd or subsequent offender may be suspended if they (1) serve either 48 hrs in jail or perform community service for ten 8 hr dys and (2) participate in a substance and driver improvement program. §14:98.1(C) & (D) Note: There is no licensing sanction for a violation of this provision. However, licensing action is taken via the admin. per se; see p. 3-202.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:
Rehabilitation:
Alcohol Education: **Yes** §32:415.1(A)(2) Note: Judges are given the authority to refer first time offenders to education or rehabilitation programs. Restricted licenses are issued to facilitate attendance in driver improvement schools.

Alcohol Treatment: **Yes** Sec. 14:98 (c) authorizes the court to order a DWI offender to undergo substance abuse treatment program in lieu of imprisonment. The court's action is based on medical evaluation and on recommendations that the convicted DWI offender will benefit from such treatment.

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: **Forfeiture.** For a 3rd or sub off, the vehicle used by the offender, if owned by them, shall be forfeited. §14:98(D) & (E)

Terms Upon Which Vehicle Will Be Released:
Other: **None**

Miscellaneous Sanctions Not Included Elsewhere: **Home Incarceration.** Provisions, relating to the sentencing of criminal law offenders either to community rehabilitation centers or "home incarceration," apply to persons convicted of DWI offenses. However, persons convicted of a 2nd or subsequent DWI offense (w/n 5 yrs) are not eligible for "home incarceration" until they serve a minimum of 48 con. hrs. of imprisonment. §15:1133 & Code of Criminal Procedure Art. 894.2(J)
Ignition Interlock. A DWI offender, who has been placed on probation, may be required to only operate motor vehicles that are equipped with **ignition interlock devices**. §§15:306 & 32:378.2
Incarceration Costs. An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure art. 890.2

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **Yes Felony/Misd**[1] The law is restricted to death caused by operating a motor vehicle either (1) while under the influence of alcoholic beverages or a controlled substance or (2) with a BAC ≥0.08 (based on grams of alcohol per 100 cubic centimeters of blood). §14:32.1

[1]If the defendant is imprisoned with hard labor, the conviction is considered a felony; otherwise, it is a misdemeanor. §§14:2(4) & (6), 14:32.1(B), Code of Criminal Procedure Art. 933 and *State v. Lobb,* 450 So.2d 59 (La.App. 3 Cir. 1984)

Other Criminal Actions Related to DWI: (continued)

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**2 to 15 yrs**[1] §14:32.1(B)
Mandatory Minimum Term:	**1 yr**[1]
Fine ($ Range):	**$2,000 to $15,000** §14:32.1(B)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §32:414
Length of Term of Licensing Withdrawal:	**12 mos**
Mandatory Action--Minimum Length of License Withdrawal:	**12 mos**
Other:	I. The offender may be required to participate in a substance abuse and/or driver improvement program. §14:32.1(B) II. **Incarceration Costs.** An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure art. 890.2

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. 2 and the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd** Not more than **6 mos** If such violation was simultaneous with a second or subsequent DWI conviction-**7 dys to 6 mos.** §32:415 See Footnote No. 2.
Mandatory Minimum Term of Imprisonment:	**7 dys** if such violation was simultaneous with a second or subsequent DWI offense conviction.

[1]As an alternative to either jail or imprisonment, a defendant may be sentenced either to community rehabilitation (provided the defendant was sentenced to a term of imprisonment of not more than 5 yrs without hard labor) (§15:1133) or to **"home incarceration"**. Code of Criminal Procedure Art. 894.2

[2]Code of Criminal Procedure Article 892.1(C) & (E) allows a court to dismiss a misdemeanor traffic offense committed under Title 32, the traffic regulation code, provided the defendant has completed a driver improvement program and has not participated in such a program w/n 2 yrs. **Comment:** Since this is a Title 32 offense, it would appear that dismissal of a charge per this criminal procedure provision is possible.

Special Note: I. A person is subject to the following sanctions if they operate a CMV while their CDL privileges have been suspended, revoked or cancelled: Imprisonment for not more than 1 yr, a fine of not more than $5,000 and/or a civil penalty of not more than $2,500 §32:415(C)(2) & (D)(2) II. A person who operates a CMV in violation of a CDL out-of-service order is subject to a civil penalty of $1,000 to $2,500 and the following CDL disqualification periods. For a 1st violation there is a disqualification from 90 dys to 1 yr (if transporting hazardous materials or operating a vehicle with 15 or more persons, the disqualification period is from 180 dys to 2 yrs). For a 2nd violation (w/n 10 yrs) there is a disqualification from 1 to 5 yrs (if transporting hazardous materials or operating a vehicle with 15 or more persons, the disqualification period is from 3 to 5 yrs). For a 3rd or subsequent violation (w/n 10 yrs) (including transporting hazardous materials or operating a vehicle with 15 or more persons) there is a disqualification from 3 to 5 yrs. §§32:414.2(B)(2) & 32:427(A)(3)

Other Criminal Actions Related to DWI: (continued)

Fine ($ Range):	Not more than **$500** If such violation was simultaneous with a second or subsequent DWI conviction-**$300 to $500** §32:415 **Civil Penalty:** An offender is also subject to a civil penalty of not more than **$1,250** §32:415(D)(1)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev** §32:415(B)
Length of Term of License Withdrawal Action:	Original susp/rev period extended for **1 yr** §32:415(B)
Mandatory Term of License Withdrawal Action:	For 2nd and sub. offenses, original susp/rev period extended for **1 yr** (mand except in situations where the use of an ignition interlock device has been authorized) Note: A hardship license is available for first offenders. §32:415.1 **Special Note:** A 1st or sub offender is eligible for restricted driving for the **entire** susp/rev period, if the equip their vehicles with "ignition interlock" devices. §32:378.2(A)(2)(ii) **Incarceration Costs.** An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure art. 890.2

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** §32:1472 et seq.
Grounds for Being Declared an Habitual Offender:	Convictions for 10 or more traffic law offs w/n a 3 yr period Applies to those offenses that are required to be reported to the Department of Public Safety and Corrections. §32:1472(A)
Term of License Rev While Under Habitual Offender Status:	**Prohibition** from operating a vehicle for **3 yrs** §32:1479 Note: A 1st time habitual offender may apply for a hardship license under §32:1477(B) & (C)(3).
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**Yes** §32:398(E) & (F) A report is made by the cornor.
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**Yes**
Pedestrian:	**Yes**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21**[1&2] §§14:93.11, 14:93.12, 26:90(A) & 26:286(A) (Year Eff: 1987)
Minimum Age (Years) Possession:	**21**[1&2] §14:93.12
Minimum Age (Years) Consumption:	**21**[1&2] §14:93.12 Note: The term "public possession" is defined to include consumption. §14:93.10(2)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**No** Under §9:2800.1[3], neither a commercial server nor a social host can be held liable for the actions of an intoxicated patron or guest who is over the legal drinking age. *Bourgeois v. Puglisi,* 615 So.2d 1047 (La.App. 1 Cir. 1993) This statute does not address the liability of commercial servers or social hosts with regards to the actions of intoxicated minors who have been served alcoholic beverages.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Liability Limited.** A licensee is liable to either an injured third party or an injured patron only if the licensee commits an "affirmative act" towards the intoxication of the patron. The mere serving of alcoholic beverages is not such an "affirmative act". *Mills v. Harris,* 615 So.2d 533 (La.App. 3 Cir. 1993), *Bertrand v. Kratzner's County Mart,* 563 So.2d 1302 (La.App. 3 Cir. 1990), *writ denied,* 569 So.2d 628, & *Pence v. Ketchum,* 326 So.2d 831 (La. 1976) **Special Note:** However, liability does apply to the actions of intoxicated minors. §9:2800.1 & *Edson v. Walker,* 573 So.2d 545 (La.App. 1 Cir 1991)[4] Note: This case concerned actions of a person under 18 yrs old.

[1]The term "public possession" does not include the possession or consumption of alcoholic beverages either (1) for a religious purpose, (2) when the person is accompanied by a parent or legal custodian who is over 21 yrs old, (3) for medical purposes or (4) at a private residence. §14:93.10(2)

[2]The Louisiana Supreme Court has held that the law, making it illegal (1) to sell alcoholic beverages to persons <21 yrs or (2) for these persons to purchase such beverages does not violated the State constitutional provision which prohibits age discrimination, Art. I, §3. *Manuel, et al. v. State,* 677 So.2d 116 (La. 1996)

[3]This statute has been held constitutional. *Schulker v. Roberson,* 676 So.2d 684 (La.App. 3 Cir. 1996)

[4]See also *Pence v. Ketchum,* 326 So. 2d 831 (La. 1976), *Chausee v. Southland,* 400 So.2d 1199 (La. App. 1 Cir. 1981) (writ denied 404 So.2d at 278, 497 & 498), & *Farrington v. Houston's Inc.,* 750 F.2d 492 (5th Cir. 1985).

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:	**Limited Liability.** Sec. 9:2800.1 prohibits liability actions against social hosts for injuries sustained by or caused by an intoxicated adult guest. *Hollis v. City of Baton Rouge,* 593 So.2d 388 (La.App. 1 Cir. 1991). However, see *Garcia on behalf of Garcia v. Jennings,* 427 So.2d 1329 (La.App. 2 Cir. 1983)[1], & *Gresham v. Davenport,* 542 So.2d 48 (La.App. 2 Cir. 1988)[2]. See Footnote No. 3.
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	A. For alcoholic beverages with an alcohol content of 6% or above-**Misd** §§26:2(1) & 26:90(A)(2) B. For alcoholic beverages with an alcohol content of ½ of 1% to 6%-**Misd** §§26:241(1) & 26:286(A)(2)
Term of Imprisonment:	A. For alcoholic beverages with an alcohol content of 6% or above-**30 dys-6 mos** §26:171 B. For alcoholic beverages with an alcohol content of ½ of 1% to 6%-**30 dys-6 mos** §26:521
Fine ($ Range):	A. For alcoholic beverages with an alcohol content of 6% or above-**$100 to $500** (and/or the following administrative fines: 1st off-**$50 to $500**; 2nd off-(w/n 3 yrs)-**$250 to $1,000** 3rd off-(w/n 3 yrs)-**$500 to $2,500** §26:96) B. For alcoholic beverages with an alcohol content of ½ of 1% to 6%-**$100 to $500** §26:521 (and/or the following administrative fines: 1st off-**$50 to $500**; 2nd off (w/n 3 yrs)-**$250 to $1,000**; 3rd off-(w/n 3 yrs)-**$500 to $2,500** §26:292) **Incarceration Costs.** An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure art. 890.2

[1]This case concerned the death of a minor who was given alcoholic beverages by adult guests in violation of a statute that prohibits adults from purchasing such beverages for minors. The adults were held liable. However, if no alcoholic beverages are provided by a social host to a minor guest, the host cannot be held liable for injuries caused by the minor guest who has procured and consumed alcoholic beverages obtained form another source. *Spears v. Bradford,* 652 So.2d 628 (La.App. 1 Cir. 1995)

[2]In this case, a minor social host served alcoholic beverages to a minor guest who became intoxicated. The intoxicated minor guest caused an automobile accident by grabbing the steering wheel of the motor vehicle he was ridding in. Passengers ridding in the rear seats of the vehicle were injured in the accident. These passengers were able to maintain a common law dram shop action against the minor social host.

[3]A motel was held liable for the injuries sustained by a minor passenger in a traffic accident while riding in a motor vehicle driven by an intoxicated minor driver. Although the motel had not supplied alcoholic beverages to the minor driver, the motel's management had knowledge that such beverages were being consumed by the minor on the premises and ordered the minor to leave after they had become intoxicated. The court reasoned that the motel had a responsibility not to allow such a person to consume alcoholic beverages and then force them to leave in an intoxicated condition where such action could result in harm. *Kramer v. Continental Cas. Co.,* 641 So.2d 557 (La.App. 3 Cir. 1994)

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev or Susp**[1] Not mandatory §§26:90(I) & 26:286(I)[2]
Length of Term of License Withdrawal:	**Not specified**
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	See Footnote No. 3.
Type of Criminal Action:	A. For alcoholic beverages with an alcoholic content of 6% or above - **Misd** §§ 26:2(1) & 26:90(A)(1) B. For alcoholic beverages with an alcoholic content of ½ of 1% to 6% - **Misd** §§26:241(1) & 26:286(A)(1)
Term of Imprisonment:	Same as for serving alcoholic beverages to an intoxicated person above.
Fine ($ Range):	Same as for serving alcoholic beverages to an intoxicated person above.
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev or Susp**[1] Not mandatory §§26:90(I) & 26:286(I)[2]
Length of Term License Withdrawal:	**Not specified**
Anti-Happy Hour Laws/Regulations:	**Yes** §§26:90(A)(15) & 26:286(A)(15) These sections prohibit the sale of alcoholic beverages "at a fixed price on an 'all you can drink' basis after" 10:00 pm.
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**No**

[1]If a licensee has been certified as a "responsible vendor" of alcoholic beverages, their license is not suspended or revoked for a first offense. §26:905(B)(1)(a)

[2]Under §§26:97 & 26:293, the liquor licensing authority may deny issuing a permit for a premises for one (1) year if such premises were the subject of a revoked license.

[3]In addition to the sanctions provided in the alcoholic beverage control law, the following sanctions are available in the criminal law: An imprisonment term of not more than 6 mos and/or a fine of not more than $100. §§14:93.11 & 14:93.14

STATE:	**MAINE**
General Reference:	Maine Revised Statutes Annotated (MRSA) & Code of Maine Rules (CMR)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicants[1] 29-A MRSA §2411(1)(A)
Illegal Per Se Law (BAC):	≥**0.08**[2] 29-A MRSA §2411(1)(B)
Presumption (BAC):	**No**[3]
Types of Drugs/Drugs and Alcohol:	Under the influence of **intoxicants**[1] 29-A MRSA §2411(1)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No** Note: A PBT may be conducted by law enforcement officers without legislative authority. *State v. Pinkham,* 586 A.2d 730 (Me. 1991)
Implied Consent Law: Arrest Required (Yes/No):	**No** An actual "arrest" is not required. However, the police must still have "probable cause" before a suspected drunk driver has to submit to a chemical test. 29-A MRSA §2521(1)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** 29-A MRSA §2521(1)
Refusal to Submit Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) 29-A MRSA §2521(3)(B) & *State v. Allen,* 485 A.2d 954 (Me. 1984)
Other Information:	I. A person shall be required to submit to a chemical test if they are involved in an accident that results or may result in death to any other person and there is probable cause to believe that they were operating a vehicle while DWI. 29-A MRSA §2522 II. There is case law that appears to hold that a "forced" test may be administered if their is probable cause to believe that a driver has committed a DWI offense and they have refused to submit to a chemical test. *State v. Baker,* 502 A.2d 489 (Me. 1985)

[1]"Under the influence of intoxicants" means being under the influence of alcohol, a drug other than alcohol, a combination of drugs or a combination of alcohol and drugs. The term "drugs" refers to either "scheduled drugs" (i.e., controlled substances) or to "any natural or artificial chemical substance that, when taken into the human body, can impair the ability of the person to safely operate a motor vehicle." 17-A MRSA §1101 and 29-A MRSA §2401(4) & (13)

[2]"Blood alcohol level" (blood alcohol concentration) is stated as percent by wgt. of alcohol in the blood. However, the law further defines this to mean grams of alcohol per 100 milliliters of blood. 29-A MRSA §2401(2)

[3]For purposes of evidence in proceedings other than those arising under 29-A MRSA §2411 (DWI offenses), it shall be presumed that a person was under the influence of intoxicants when they have a blood alcohol level ≥0.08. 29-A MRSA §2432(3)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Via regulations, a person's CDL is suspended if they operate a CMV and (1) they have a BAC ≥0.04 (Standard: Percent by weight of alcohol in the blood) or (2) they are under the influence of a controlled substance. If the person has neither a prior DWI offense conviction nor administrative license adjudication (e.g., driving with BAC ≥0.04) related to CMV operations, their CDL is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials). If they have has either a prior DWI offense conviction or administrative license adjudication (e.g., driving with BAC ≥0.04) related to CMV operations, their CDL is permanently suspended (mand). Under statutory provisions, if a person refuses to submit to a chemical test to determine either alcohol level or drug concentration where there is probable cause to believe that they were operating a CMV with a BAC ≥0.04 or while under the influence of drugs, their privilege to operate a CMV is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) for a 1st refusal and permanently for a 2nd or subsequent refusal. 29-A MRSA §§101(17), 1253, 2458(2)(M) & 2523 and CMR 29-250-006 (§§3 & 4)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** 29-A MRSA §2521(1)[1]
Urine:	**Yes** 29-A MRSA §2521(1)[1]
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	I. 1st refusal-**Susp-275 dys**[2]; 2nd refusal-**Susp-18 mos** (mandatory); 3rd refusal-**Susp-4 yrs** (mandatory); 4th refusal-**Susp-6 yrs** (mandatory) 29-A MRSA §2521(6) For failure to submit to a mandatory chemical test-**Susp-1 yr** (mandatory) 29-A MRSA §2522 See Footnote No. 3. **Child Endangerment.** 1st or sub refusal, an additional **275 dy susp** if the driver was carrying a passenger under 21 yrs old. This additional suspension appears to be mandatory. 29-A MRSA §2451(5) II. Persons Under 21 Years Old. A person under 21 years old, who refuses to submit to a chemical test, where there is probable cause that they were driving with "any amount of alcohol in the blood", is subject to the following licensing action: 1st refusal-**Susp-18 mos**[2]; subsequent refusal-**Susp-30 mos (mand)**. 29-A MRSA §2472(4) **Child Endangerment.** 1st or sub refusal, an additional **180 dy susp** if the driver was carrying a passenger under 21 yrs old. This additional suspension appears to be mandatory. 29-A MRSA §2472(4) **Important.** These licensing actions may not be mandatory in all situations; see the Special Note on p. 3-216.
Other:	A person can have their vehicle's registration/certificate of title suspended for a refusal. The law provides that the State has this authority if a person is subject to mandatory license suspension or revocation. 29-A MRSA §2458(2)(A)

[1]A breath test is administered unless it is unreasonable to give such test. 29-A MRSA §2521(2)
[2]See Special License on p. 3-216.
[3]If negligence was involved in the related death as well as alc./drugs, the suspension for refusal is 3 consecutive yrs (mandatory) and is in addition to any other suspension that may be imposed for refusal to submit to a chemical test. 29-A MRSA §2456

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off, 2nd off (w/n 10 yrs) and 3rd off (w/n 10 yrs) Cl D Crime-Less than **1 yr** 17-A MRSA §1252 & 29-A MRSA §2411 4th or sub. off (w/n 10 yrs) Cl C Crime-Not more than **5 yrs** 17-A MRSA §1252 & 29-A MRSA §2411(5)(D) See the Special Note below.
Mandatory Minimum Term:	1st off-**Not less than 48 hrs**[1&2] or **96 hrs**[2] if the person refused to submit to a chemical test; 2nd off (w/n 10 yrs)-**7 days**[2] or **12 dys**[2] if the person refused to submit to a chemical test; 3rd off (w/n 10 yrs)-**30 dys**[2] or **40 dys**[2] if the person refused to submit to a chemical test; 4th or sub. off (w/n 10 yrs) or **6 mos**[2] or **6 mos and 20 dys**[2] if the person refused to submit to a chemical test 29-A MRSA §2411(5)
Fine:	
Amount ($ Range):	1st off, 2nd off (w/n 10 yrs) and 3rd off (w/n 10 yrs) Cl D Crime-Not more than **$2,000** 17-A MRSA §1301 4th or sub (w/n 10 yrs) Cl C Crime-Not more than **$5,000** 17-A MRSA §1301 & 29-A MRSA §2411(1)
Mandatory Min. Fine ($):	1st off-**$400** or **$500** if the person refused to submit to a chemical test; 2nd off (w/n 10 yrs)-**$600** or **$800** if the person refused to submit to a chemical test; 3rd off (w/n 10 yrs)-**$1,000** or **$1,300** if the person refused to submit to a chemical test; 4th or sub. off (w/n 10 yrs)-**$2,000** or **$2,400** if the person refused to submit to a chemical test 29-A MRSA §2411(5)
Other Penalties:	
Community Service:	**Yes** as a condition of probation 17-A MRSA §1204(2-A)(L)
Restitution (eg Victim's Fund)	**Yes** I. Direct compensation by the defendant to a victim either as a condition of probation or as part of the incarceration sanction. 17-A MRSA §§1204(2-A)(B), 1252 & 1321 et seq. II. A victims' compensation fund. Claims cannot exceed $5,000. 5 MRSA §3360 et seq.
Other:	**Surcharge.** A **$30** surcharge must also be paid. However, if the offense was for driving while under the influence of drugs or a combination of liquor and drugs, the surcharge is **$125**. These surcharges are paid into the Highway Fund for the purpose of covering the administration and analysis of chemical tests. 29-A MRSA §2411(7)

[1]This mandatory jail sanction applies only when at least one of the following conditions is satisfied. The defendant either (1) had a BAC ≥0.15, (2) was driving 30 MPH over the speed limit, (3) was eluding a police officer or (4) was operating a vehicle with a passenger under 21 years old (**child endangerment**).

[2]This jail term does not have to be consecutive. Under 17-A MRSA §1252(3-A), a county jail term of imprisonment may be served intermittently.

Special Note: It is a Class C Crime to cause serious bodily injury while operating a vehicle in violation of the DWI laws. Jail-Not more than 5 yrs; fine-not more than $5,000; minimum period of license suspension is 18 mos. 17-A MRSA §§1252 & 1301 The following minimum mand sanctions apply: (1) Jail for 6 mos; (2) a $2,000 fine; and, (3) 6 mos license susp. 29-A MRSA §2411(6)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Savard,* 659 A.2d 1265 (Me. 1995), *& Allen v. Attorney General of State of Maine,* 80 F.3d 569 (1st Cir. 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:	See Double Jeopardy on p. 3-213.
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes BAC ≥0.08**[1&2] (See Footnote No. 2 on p. 3-211 and the Special Note on p. 3-215.) The periods of license susp and conditions for reinstatement for 1st and subsequent offs are the same as Post DWI Conviction Licensing Actions (below). However, unlike a 1st DWI offense conviction, there is **no** mand susp for a 1st admin. per se violation; a work restricted license is available.[3] 29-A MRSA §§2453 & 2503
Other:	Under 29-A MRSA §2458(2)(A), a person's license (or certificate of registration/title) may be rev/susp if they have "committed" an off that usually requires license/registration susp or rev (e.g., DWI). Such action may be taken without a preliminary hearing. The time period for this rev/susp is not specified. **Comment:** Such action could occur prior to a conviction. See Footnote No. 4.
Post DWI Conviction Licensing Action:	See Footnote Nos. 1 and 5 below and the Special Note on p. 3-213.
Type of Licensing Action (Susp/Rev):	For all offs-**Susp** See the Special Note on p. 3-213 concerning serious bodily injury DWI offenses.
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**90 dys**[6]; 2nd off (w/n 10 yrs)-**18 mos**[6]; 3rd off (w/n 10 yrs)-**4 yrs**[6]; 4th or sub. off (w/n 10 yrs)-**6 yrs**[6] 29-A MRSA §§2411(5) & 2451

[1]**Persons Under 21 Years Old.** Under 29-A MRSA §2472(3), (3-A) & (6), a person, under 21 yrs old (a provisional licensee), who operates a motor vehicle either while in violation of the regular DWI law or with "any amount of alcohol in the blood" (See Footnote No. 2. on p. 3-211.), has their license suspended as follows: 1st offense-**1 yr**; and, 2nd offense-**2 yrs** (mand). For 1st offenders, (1) if the suspension is based on operating a motor vehicle with "any amount of alcohol in the blood", (2) there is no other alternative means of transportation and (3) the person does not have a previous DWI offense (w/n 10 yrs), a restricted license may be issued for either employment or educational purposes without a waiting period. 29-A MRSA §2503 First offenders are also eligible for license reinstatement after 6 mos if they complete an alcohol and drug program (See Special License on p. 3-216.). However, subsequent offenders are only eligible for license reinstatement after the completion of the full suspension period and the completion of an alcohol and drug program. 29-A MRSA §2472(6) **Child Endangerment.** For 1st or 2nd offenders there is an additional suspension of **180 dys** (mand) if the driver was carrying a passenger under 21 yrs old. **Important.** These licensing actions may not be mandatory in all situations; see the Special Note on p. 3-216.

[2]The licensing agency may administratively suspend a driver's license for 3 yrs if the driver negligently causes a death while operating a motor vehicle either (1) while under the influence of intoxicants, (2) with a BAC ≥0.08 or fails to comply with the implied consent law (29-A MRSA §2521). For a failure to comply with the implied consent law, this suspension is consecutive to a refusal suspension. Also, any period of suspension served is "deducted" from any revocation period imposed under 29-A MRSA 2454 (See Homicide by Vehicle on p. 3-217.). 19-A MRSA §2456

[3]If there is no alternative means of transportation, a work restricted license may be issued provided that person either has not (1) been convicted of a DWI off (w/n 10) or (2) had a previous admin. per se suspension (w/n 10 yrs). 29-A MRSA §2503

[4]A person may be denied CDL privileges without a preliminary hearing if they were operating a operating CMV with a BAC ≥0.04 or were in violation of Federal law or regulation concerning CMV operations. 29-A MRSA §§1254(c) & 2458(2)(M)

[5]A person's endorsement to operate a school bus is permanently revoked if they drive such a vehicle while DWI. A person, who has a school bus endorsement and who commits a DWI offense while operating another type of vehicle, has their school bus endorsement suspended for 3 yrs (1 yr mand) for a 1st offense and for 6 yrs (mand) for a 2nd or subsequent offense (w/n 10 yrs). 29-A MRSA §2452

[6]A license suspension period for a drunk driving offense conviction is reduced by any suspension period that was imposed for an admin. per se violation. 29-A MRSA §2453(6)(c)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of Withdrawal:

1st off-**60 dys**[1&2]; 2nd off-**18 mos**[1]; 3rd off-**4 yrs**[1]; 4th or sub. off-**6 yrs**[1]
These suspensions may be reduced if the offender participates the "ignition interlock" program; see Ignition Interlock on p. 3-216. **Important.** These suspensions are not mandatory in all situations; see the Special Note on p. 3-216.

Child Endangerment. A person, who violates the drunk driving law while transporting a passenger under 21 year old, must have their license suspended for an additional 275 days. 29-A MRSA §§2411(5)(G) & 2451(5) **Important.** This licensing action may not be mandatory in all situations; see the Special Note on p. 3-216.

Special Note: The licensing agency has the authority to suspend a driver's license for a longer period of time than indicated above for either an admin. per se violation or a drunk driving offense conviction. 29-A MRSA §§2451(3) & 2453(6)(D)

Conditional License. Under 29-A MRSA §§2504 & 2506, upon issuing a license to a person who has either been convicted of a DWI offense or found to have violated the admin. per se law, the following conditions may be placed on the license: 1st conviction/admin. per se action-for a period of 1 yr from the date of reinstatement, the driver cannot operate a motor vehicle after having consumed any alcohol; and, 2nd and subsequent convictions/admin per se actions (w/n 10 yrs)-for a period of 10 yrs from the date of reinstatement, the driver cannot operate a motor vehicle after having consumed any alcohol.
Under 29-A MRSA §2457, unless longer periods are authorized by law, the following special licensing sanctions apply to persons who operate a motor vehicle in violation of the above conditions: (1) Revocation for a minimum period of 1 yr if they either (a) are convicted a DWI offense or (b) have operated a motor vehicle with any amount of alcohol in the blood. If licensing action is based on operating a motor vehicle with any amount of alcohol in the blood, a restricted license for employment or educational purposes be issued if there is no alternative means of transportation and is contingent upon completion of an alcohol treatment (rehabilitation) program. 29-A MRSA §2503 (2) For refusal to submit to a chemical test where there is probable cause to believe that the driver has any amount of alcohol in the blood, susp for not less than 2 yrs.

[1]A license suspension period for a drunk driving offense conviction is reduced by any suspension period that was imposed for an admin. per se violation. 29-A MRSA §2453(6)(c)
[2]For 1st offenders, after 2/3 of license susp period has passed, a restricted license may be issued provided the offender has completed an alcohol education/treatment program. The licensee is restricted to operating motor vehicle only for the purpose of going either to and from employment or to and from an alcohol or drug program for a minimum of 90 dys after the original suspension date. 29-A MRSA §2501(1) & (2)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:
Rehabilitation:
Alcohol Education: See the Special Note below.
Alcohol Treatment: 1st and subsequent offenders must participate in and complete an alcohol or drug program before their driving privileges can be restored. 29-A MRSA §§2411(5)(E) & 2504

Special License. 1st offenders may be issued a special license following alcohol/drug assessment and the completion of at least 3 treatment sessions. A 1st offender includes a first violator of the implied consent law, drunk driving law, administrative per se law and, for persons under 21 yrs old, operating a motor vehicle with any alcohol in their system. 29-A MRSA §2502

Special Note: In addition, a temporary restricted license may be issued to any offender for the purpose of allowing them to attend an alcohol education or treatment program notwithstanding any other provision of law. 29-A MRSA §2505

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: (1) For a sub off w/n 10 yrs, a defendant's vehicle registration (including the right to register a vehicle) and plates must be **suspended** for the same length of time as their license suspension.[1] 29-A MRSA §§2411(5)(B)(4), (5)(C)(4) & (5)(D)(4) and 2416 See Footnote No. 2. (2) A person's (sole owner's) vehicle must be **forfeited** if they operate their vehicle in violation of the DWI laws and they are still under suspension/revocation of a previous DWI offense. 29-A MRSA §2421 (3) Temporary Impoundment. Following an arrest either (1) for a drunk driving offense or (2) for driving while on a suspended or revoked license, based on a drunk driving offense, the vehicle used in the offense may be seized. The vehicle may be released after 8 hrs. 29-A MRSA §2422

Terms Upon Which Vehicle Will Be Released:
Other: The State has the authority to suspend the registration/certificate of title of a person's vehicle if they are subject to mandatory license suspension or revocation. 29-A MRSA §2458(2)

Miscellaneous Sanctions Not Included Elsewhere: **Ignition Interlock.** The mand susp periods may be reduced as follows, if the drunk driving offender installs an ignition interlock device on motor vehicles they operate: 2nd off-**1 yr** mand susp and ignition interlock use for 6 mos; 3rd off-**2 yr** mand susp and ignition interlock use for 2 yrs; and, 4th or sub. off-**4 yr** mand susp and ignition interlock use for 4 yrs. 29-A MRSA §§2401(5-A) & 2507

[1]Notwithstanding this requirement, such suspension will not be imposed if a spouse or other family member of the defendant can prove to the satisfaction of the court that a hardship will result.
[2]The State is given broad authority to suspend a person's vehicle's registration/certificate of title based on "any cause" which is deemed "sufficient". 29 MRSA §2241(1)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** It is a Cl C Crime to cause a death while operating a vehicle in violation of the drunk driving laws.[1] 29-A MRSA §2411(6) See the Special Note below.
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **5 yrs** 17-A MRSA §1252
Mandatory Minimum Term:	**6 mos** 29-A MRSA §2411(6)
Fine ($ Range):	Not more than **$5,000** 17-A MRSA §1301
Mandatory Minimum Fine:	**$2,000** 29-A MRSA §2411(6)
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Susp**[2] (court ordered) 29-A MRSA §2411(6)
Length of Term of Licensing Withdrawal:	**6 yrs** 29-A MRSA §2411(6)
Mandatory Action--Minimum Length of License Withdrawal:	**6 yrs** 29-A MRSA §2411(6)
Other:	I. **Administrative Suspension:** A person, who negligently causes the death of another, while driving either (1) while under the influence of intoxicants, (2) with a BAC ≥0.08 or (3) who fails to submit to a chemical test, has their license suspended for 3 yrs (mand) by the licensing agency. If the case of test refusal, the suspension is consecutive to the refusal susp. Otherwise, the this susp is deducted from the regular susp or rev period. 29-A MRSA §2456 II. **Driver Education/Substance Abuse Program:** If alcohol or drugs are involved in a criminal homicide caused by the operation of a motor vehicle, a defendant must complete a driver education program and, if needed, a substance abuse and/or a 2 yr. after care program prior to license restoration. 29-A MRSA §2455(3)

[1]**Manslaughter Statutes.** It is a Cl A Crime to cause a death by criminal negligence or reckless conduct via a motor vehicle. The sanctions for a Cl A Crime are incarceration for not more than **40 yrs** and/or a fine of not more than **$50,000**. 17-A MRSA §§1252 & 1301 And, an offender's license is revoked for **5 yrs**. 29-A MRSA §2454(1) See Footnote No. 2 and the Special Note below.
[2]**Death Related to Intoxication.** A defendant's license is **permanently revoked** if they were under the influence of an intoxicant at the time of the offense. However, a first offender may have their license reinstated after 10 yrs. 29-A MRSA §2454(2) & (5)

Special Note: The Maine Criminal Code (17-A MRSA) does not use the terms "misdemeanor" or "felony " to either describe or define crimes. The law describes the offense of vehicle homicide as a Class A crime without further defining it as either a misdemeanor or a felony. **Comment:** Most States would consider a Class A to be a felony.

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. 1.
Sanction:	
Criminal:	
Imprisonment (Term):	1st, 2nd & 3rd offs-Cl E crime-Not more than **6 mos**; sub off-Cl C crime-Not more than **5 yrs** 17-A MRSA §1252 & 29-A MRSA §2412-A See Temporary Impoundment under Vehicle Impoundment/ Confiscation for a DWI offense on p. 3-216.
Mandatory Minimum Term of Imprisonment:	1st off-**7 con dys**; 2nd off (w/n 10 yrs)-**30 con dys**; 3rd off (w/n 10 yrs)-**60 con dys**; 4th or sub off (w/n 10 yrs)-**6 mos** 29-A MRSA §2412-A(3) See Footnote No. 2.
Fine ($ Range):	1st, 2nd & 3rd offs-Cl E crime-Not more than **$1,000**; sub off-Cl C crime-Not more than **$5,000** 17-A MRSA §1301, subs. 1-A
Mandatory Minimum Fine:	1st off-**$500**; 2nd off (w/n 10 yrs)-**$1,000**; 3rd off (w/n 10 yrs)-**$2,000**; 4th or sub off (w/n 10 yrs)-**$3,000** 29-A MRSA §2412-A(3) See Footnote No. 2.
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp** 29-A MRSA §2412-A(3)
Length of Term of License Withdrawal Action:	**1 to 3 yrs** Added to the original susp or rev.
Mandatory Term of License Withdrawal Action:	**1 yr** Added to the original susp or rev.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** 29-A MRSA §2551 et seq.
Grounds for Being Declared an Habitual Offender:	Convictions for 3 serious traffic offs. w/n 5 yrs (e.g. veh. homicide, DWI, reckless driving, etc.)
Term of License Rev While Under Habitual Offender Status:	The rev period is indefinite but relief from such rev may be granted after **1 yr**[3]. 29-A MRSA §§2552 & 2554
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	1st off-Cl D crime; sub. off (w/n 10 yrs)-Cl C crime 29-A MRSA §2557(2)

[1]The CMV law does not provide sanctions for operating CMV during either a CDL disqualification or a CDL out-of-service order. **Special Note:** Under 29-A MRSA §2458(2)(M), the licensing agency is authorized to suspend a CMV operators CDL if they violate Federal law or regulations (e.g., 49 USC §31301 et seq. and 49 CFR §§383.51. 383.53, 383.82, 391.15, 392.5, 392.13 & 49 CFR Part 386, Appendix A) pertaining to CMV operators. Therefore, any Federal law or regulation that makes it an offense to operate a CMV while either disqualified or under an out-of-service order, could result in a State authorized CDL suspension.

[2]For 2nd and sub offs, the mand sanctions are imposed only if mand sanctions were imposed for prior offs. 29-A MRSA §2412-A(3)

[3]A work-restricted license is available at any time. 29-A MRSA §2556 However, a person is not eligible for this type of license, if either (1) one of the offenses used to determine habitual offender status was homicide related to motor vehicle operations, (2) they are convicted of operating a motor vehicle while on habitual offender status or (3), after having thier license restored, they are conviced w/n 5 yrs of an offense cited in the habitual offender law. In addition, a person is not eligible for this type of license, if one of the offenses used to determine habitual offender status was a DWI offense, until they complete (1) the required license suspension periods and (2) any alcohol or drug program. 29-A MRSA §2556(5)

Other Criminal Actions Related to DWI: (continued)

Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	1st off-Less than **1 yr**; sub. off (w/n 10 yrs)-Not more than **5 yrs** 17-A MRSA §1252
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	1st off-Not more than **$2,000**; sub. off (w/n 10 yrs)-Not more than **$5,000** 17-A MRSA §1301
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	Relief from habitual offender status shall not be granted for at least 3 yrs from the date the offender would have been eligible. 29-A MRSA §2557 See Footnote No. 3 on p. 3-218.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1985) 28-A MRSA §§2(20) & 2051(1)(A) and citations listed under criminal actions for selling alcohol to minors below.
Minimum Age (Years) Possession:	**21** Home and employment exemption 28-A MRSA §§2(20) & 2501(1)(E)
Minimum Age (Years) Consumption:	**21** Except at home in the presence of either parents or legal guardians 28-A MRSA §§2(20) & 2051(1)(B)
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** 28-A MRSA §2501 et seq. Note: Except for medical expenses, recovery under the dram shop act is limited to $250,000 per single accident or occurance. 28-A MRSA §2509[1]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No**[2]

[1]This damage limitation provision has been held constitutional under both the Federal and State constitutions. *Peters v. Saft,* 597 A.2d 50 (Me. 1991)

[2]The dram shop law indirectly abrogated the holding in *Klingerman v. Sol Corporation of Maine,* 505 A.2d 474 (Me. 1986), that established dram shop liability via common law negligence actions. The dram shop law is now the exclusive remedy for such actions.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:	**Yes** Liability is limited to situations where the social host served alcoholic beverages (1) to a minor or (2) to a minor or a visibly intoxicated person in a "reckless manner". 28-A MRSA §§2503(5), 2505(2), 2506(1) & 2507
Other:	
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Class E Crime 28-A MRSA §§1, 62(8), 354, 705(2)(A) & 705(3)(A)
Term of Imprisonment:	Not more than **6 mos** 17-A MRSA §1252(2)(E)
Fine ($ Range):	For a person, not more than **$1,000**; for an organization, not more than **$10,000** 17-A MRSA §1301(1)(C) & (3)(E)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Susp or rev 28-A MRSA §§801 & 803(5)
Length of Term of License Withdrawal:	For susp-not specified in the statute; for rev-**1 to 5 yrs**[1]
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	Class E Crime 28-A MRSA §§1, 2(20), 62(8), 354, 705(2)(E), 705(3)(E), 1901 & 1902
Term of Imprisonment:	Not more than **6 mos**. 17-A MRSA §1252(2)(E)
Fine ($ Range):	For a person, not more than **$1,000**; for an organization, not more than **$10,000** 17-A MRSA §1301(1)(C) & (3)(E)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Susp or Rev 28-A MRSA §§801 & 803(5)
Length of Term License Withdrawal:	For susp-not specified in the statute; for rev-**1 to 5 yrs**[1&2]
Anti-Happy Hour Laws/Regulations:	**Yes** 28-A MRSA §709
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Applies only to drivers 29-A MRSA §2112

[1]An administrative fine of $50-$1,500 may be imposed instead of or in addition to any license suspension or revocation. 28-A MRSA §803(8)

[2]An agent of a licensee is subject to a civil forfeiture of not more than $500 if they sell liquor to a minor. 28-A MRSA §2084

STATE:	**MARYLAND**
General References:	Annotated Code of Maryland Most references are either to (1) the Transportation Article (Tran.), (2) the Courts and Judicial Proceedings Article (C&JP) or (3) Art. 2B.

Basis for a DWI Charge:

Standard DWI Offense:	I. While intoxicated Tran. §21-902(a)(1)[1] II. Under the influence of alcohol Tran. §21-902(b)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[2&3] Tran. §§11-127.1 & 21-902(a)(2)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	I. While Intoxicated Tran. §21-902(a)[1] II. Under the influence of (1) **Any Drug**, (2) Any Combination of Drugs, (3) a Combination of One or More Drugs and Alcohol and (4) Any Controlled Dangerous Substance[1] Tran. §21-902(c)(1) & (d)
Other:	An alcohol concentration ≥**0.07 but <0.10**[3] is *prima facie* evidence of driving while under the influence. C&JP §10-307(d) For Commercial Motor Vehicle Operators, see below. For **Persons Under 21 Years Old,** see Footnote No. 4.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** Tran. §16-205.2
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** The law uses the term "detained" instead of "arrest". Tran. §16-205.1
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** Tran. §16-205.1 See also C&JP §10-302 et seq.
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) C&JP §10-309(a) This evidence establishes no inference (presumption) of guilt or innocence of a drunk driving offense. Evidence of a refusal can only be admitted if it is "material and relevant" to collateral issues related to such offense. *Krauss v. State,* 587 A.2d 1102 (Md. 1991)

[1]The law states that it is an offense to drive a vehicle while "intoxicated". The law does not specify any particular substance to be associated with such intoxication.
[2]The offense is defined as operating motor vehicle while "intoxicated per se". Tran. §21-902(a)(2) "Intoxicated per se" is defined as having a BAC/BrAC ≥0.10 at the time of testing. Tran. §11-127.1
[3]Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. C&JP §10-307(a)(2)(i) & (ii), Tran. §§11-103.2 & 11-127.1 and Art. 27, §§388A(a)(2)(I) & 388B(a)(2)(I)
[4]**Persons Under 21 Years Old.** A person <21 yrs old must have a restriction placed on their license that prohibits them from operating a motor vehicle with an alcohol concentration ≥0.02 (For standards, see Footnote No. 3 above.). Such a BAC/BrAC is *prima facie* evidence of a violation of this prohibition. C&JP §10-307(e) & (f) and Tran. §16-113(b)(1)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (See Footnote No. 3 above.), (2) have violated Tran. §21-902 or a similar Federal law or (3) refuse to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life. Note: The lifetime disqualification is mand unless a reduced period is provided by Federal regulations. A CMV operator is also subject to DWI criminal sanctions and administrative actions against their regular diving privileges. In addition, a CMV operator, who has any "detectable" amount of alcohol in their system, must be placed "out-of-service" for 24 hours. C&JP §10-307(a) and Tran. §§11-103.1, 11-103.2, 11-109, 11-109.1, 11-111.1, 16-205.1(b)(1)(iii), 16-208.1, 16-812 & 16-813

Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information:	**Special Note:** If a driver is involved in either a driving while intoxicated or driving while under the influence offense which is related to an accident that resulted either in the death of or life threatening injury to another person, the driver shall be required to submit to a chemical test of their blood or breath. Tran. §16-205.1(c)(1) Except as noted above, a person cannot be compelled to submit to a chemical test. C&JP §10-309(a)(1)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes**[1] Tran. §16-205.1 See also C&JP §10-302 et seq.
Urine:	**No**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No** See Footnote No. 1 on p. 3-223.
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No** Note: A PSI is required for convictions of (1) either felony offenses or (2) misdemeanor offenses where there has been serious injury or death. Art. 41, §609(c)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal-Susp for **120 dys**[1] ; 2nd and sub refusals-Susp for **1 yr**[1] A suspension may be modified or a restricted license may be issued if an offender participates in the "ignition interlock" program for at least 1 yr. Tran. §16-205.1
Other:	**None**

[1]Under C&JP §10-305(a), a test for alcoholic content via a blood cannot be administered unless (1) the driver is unconscious and incapable of refusing a test, (2) the driver, because of injuries, has been taken to a medical facility or (3) breath test equipment is not available. The Court of Appeals of Maryland has held that, under this statute, if a driver agrees to submit to a breath test and the equipment is available but not a qualified operator, the driver may refuse to submit to blood test with out a incurring licensing action. Under these circumstances, a refusal to submit to a blood test is not considered to be a refusal to submit to a chemical test under the implied consent law. *Hyle v. MVA,* 702 A.2d 760 (Md. 1997)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 1 and Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1) Driving while under the influence (of alcohol)[2] (Misd): 1st off-Not more than **2 mos**; Subsequent off[3]-Not more than **1 yr** 2) Driving while intoxicated/≥0.10 (Misd): 1st off-Not more than **1 yr**; 2nd off[5]-Not more than **2 yrs**; 3rd & sub. off[5]-not more than **3 yrs** Trans. §§21-902 & 27-101 3) A person <21 years old operating a vehicle in violation of the 0.02 BAC/BrAC license restriction (Misd)-**None** Tran. §§27-101(b) & 27-102
Mandatory Minimum Term:	For a subsequent Intoxicated/≥0.10 Off. conviction (w/n 3 yrs)-**48 con hrs**[4] Tran. §27-101(j)
Fine:	
Amount ($ Range):	1) Driving while under the influence (of alcohol)[2]: 1st off-Not more than **$500**; Subsequent off[3]-Not more than **$500** 2) Driving while intoxicated/≥0.10, 1st off-Not more than **$1,000**, 2nd off-Not more than **$2,000**; 3rd & sub. off-not more than **$3,000** 3) A person <21 years old operating a vehicle in violation of the 0.02 BAC/BrAC license restriction (Misd)-Not more than **$500** Tran. §§27-101(b) & 27-102
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	For a subsequent Intoxicated/≥0.10 offense, conviction (w/n 3 yrs.) in lieu of the mandatory jail sentence-80 hrs. of community service. Tran. §27-101(j)
Restitution (eg Victim's Fund)	(1) The court may order a defendant to pay restitution. Art. 27, §640 (2) Also, a victim may receive payments (≤$45,000) under the Criminal Injuries Compensation Act. Art. 26A
Other:	**Ignition Interlock.** As a condition of probation, the court may order a defendant to only operate vehicles equipped with "ignition interlock" devices. Art 27, §641(a)(1)(ii)(2) and Tran. §§27-107 & 27-108 On p. 3-225, see Ignition Interlock and Alcohol Education.

[1]Probation before judgment cannot be granted by a court for a sub. alc. driving offense (w/n 5 yrs). A prior offense includes offenses for which a person has received probation before judgment. Art. 27, §641(a)(2) & *State v. Shilling,* 540 A.2d 1184 (Md.App. 1988) Note: The record of a person, who has been place on probation before judgement for an alcohol driving offense, cannot be expunged. Art. 27, §737(a)(3)

[2]For driving under the influence of drugs/controlled substances, the sanctions for 1st and subsequent offenses are the same as for a 1st off of driving under the influence of alcohol. Tran. §§21-902(c) & (d) and 27-101(c)

[3]A previous offense includes a prior driving while intoxicated/≥0.10 offense. Tran. §27-101(f)(2)

[4]Imprisonment includes confinement in an inpatient rehabilitation or treatment center. Tran. §27-101(j)

[5]A previous offense includes a prior Driving While Under the Influence offense w/n 5 yrs. Tran. §27-101(k)(2)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Jones,* 666 A.2d 128 (Md. 1995)(cert. den., 516 U.S.1173, 116 S.Ct. 1265, 134 L.Ed.2d 213 (1996)), & *Johnson v. State,* 622 A.2d 199 (Md.App. 1993)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-223.
Administrative Per Se Law:	**Yes** ≥**0.10** (BAC/BrAC See Footnote No. 3 on p. 3-221.) 1st violation-Susp **45 dys**; 2nd or sub. violation-susp **90 dys**. These susps are **not** mandatory under the following conditions. I. A restricted hardship license can be issued,[1] if the licensee has (1) not had a previous admin. per se violation (w/n 5 yrs), (2) not had a prior alcohol offense[2] conviction (w/n 5 yrs) or (3) not refused to submit to a test under the implied consent law. II. A susp may be modified or a restricted license may be issued if an offender participates in the "ignition interlock" program for at least 1 yr. C&JP §10-307(a)(2) & Tran. §16-205.1
Other:	**None**
Post DWI Conviction Licensing Action:	See Point System and Ignition Interlock on p. 3-225 and License Restrictions below.
Type of Licensing Action (Susp/Rev):	I. Driving while under the influence (of alcohol or alcohol and drugs), 1st off-**Susp**; 2nd off (w/n 3 yrs)[3]-**Susp**; 3rd & sub. off (w/n 3 yrs)[3]-**Rev** II. Driving while intoxicated/≥0.10 (or under the influence of a controlled substance)-**Rev** III. A person <21 years old operating a vehicle in violation of the 0.02 BAC/BrAC license restriction-**Susp or Rev** Tran. §§16-205, 16-208 & 16-113(f) IV. Persons <18 Years Old: (1) Driving while intoxicated, illegal per se or under the influence of a "controlled dangerous substance"-**Rev** (2) Driving while under the influence of alcohol or any other drug-**Susp** C&JP §3-824(4)(I)
Term of License Withdrawal (Days, Months, Years, etc.):	I. For Driving while under the influence, 1st off-Not more than **60 dys**; 2nd off (w/n 3 yrs)-Not more than **120 dys**

[1]The licensee may be required to participate in the "ignition interlock" program as a condition of restricted driving privileges. Tran. §16-205.1(n)(2)
[2]A conviction (w/n 5 yrs) for either Driving While Intoxicated, driving with a BAC/BrAC ≥0.10 or Driving While Under the Influence.
[3]A previous offense includes a Intoxicated or Intoxicated Per Se Offenses. Tran. §16-205(a)(2) & (c)
License Restrictions. I. If a person has been convicted of any combination of two or more drunk driving offenses (w/n 5 yrs) (See Footnote No. 1 above.), the licensing agency must place a restriction on the person's license that prohibits them from operating a motor vehicle with any amount of alcohol in their blood for 3 yrs. Tran. §16-113(g)(1) II. The licensing agency shall, when directed to do so by a court, place a restriction on a person's license which prohibits them from operating a motor vehicle with any amount of alcohol in their blood. This restriction could apply to persons who have been convicted of any type of drunk driving offense (See Footnote No. 1 above.) for the first time. Tran. §16-113(g)(2) III. In addition, the licensing agency may, when issuing a license, place a restriction on a person's license which prohibits them from operating a motor vehicle with any amount of alcohol in their blood or prohibits them from driving a motor vehicle. This restriction may contain a requirement that the person participate in the "ignition interlock" program. Tran. §16-113(a)(1)(II) & (2) A BAC/BrAC ≥0.02 is *prima facie* evidence that the person was operating a motor vehicle with alcohol in their body. C&JP §10-307(f) The sanctions for violating a restriction on a driver's license are as follows: Jail-(1) violation of a licensing agency ordered restriction-**None** (2)-violation of a court ordered restriction-not more than **2 yrs**; fine-Not more than **$500**; licensing action-**Susp or Rev**-If suspension, not more than **1 yr**; if revocation, the period is based on the **number of previous revocations** a person has regardless of the basis; the periods are as follows: **6 mos** for a 1st rev; **1 yr** for a 2nd rev; and, **18 mos** for 3rd and subsequent revocations. Tran. §§16-113(f), 16-208, 27-101(b) & 27-102

Sanctions Following a Conviction for a DWI Offense:
(continued)

II. For Driving while under the influence 3rd & sub. off (w/n 3 yrs) **and** for all Driving while intoxicated/≥0.10 offs (or under the influence of a controlled substance), the period of rev is based on the **number of previous revs** a person has regardless of the basis[1]; the periods are as follows: **6 mos** for a 1st rev; **1 yr** for a 2nd rev; **18 mos** for a 3rd revs[2]; **2 yrs** for 4th and sub. revs[2]
III. A person <21 yrs old operating a vehicle in violation of the 0.02 BAC/BrAC license restriction-**Susp**-Not more than **1 yr** or **Rev**-Based on the number of previous revocations; see II above.
IV. Persons <18 Years Old: (1) Driving while intoxicated, illegal per se or under the influence of a "controlled dangerous substance"-**Rev** in the same manner as an adult (2) Driving while under the influence of alcohol or any other drug-1st off-**6 mon**; 2nd or sub off-**1 yr**

[1]I.e., the previous revocations do not have to be alcohol driving offense related.
[2]License reinstatement only after the licensing agency is satisfied that it is safe to take such action. Tran. §16-208(b)

Point System. A person who has been convicted of an alcohol driving offense can have their license either suspended or revoked either under Tran. §16-205 or under Tran. §16-401 et. seq. (the point system). Under the point system, a driver is assessed the following points for alcohol driving off convictions: Driving While Under the Influence (of alcohol, drugs or a combination of alcohol and drugs)-8 points and Driving While Intoxicated or Intoxicated Per Se (or under influence of a dangerous controlled substance)-12 points. (1) Points assessed for any traffic law violation remain on a driver's record for two (2) yrs. A person who accumulates 8 points is subject to a license suspension and an accumulation of 12 points results in license revocation. The following suspensions may apply for point accumulations related to Driving While Under the Influence (of alcohol, drugs or a combination of alcohol and drugs): 1st off-susp not more than 6 mos; 2nd off (at least 5 yrs after 1st)-susp for not more than 9 mos; 2nd off (w/n 5 yrs) or 3rd off-susp for not more than 12 mos;, and 4th or sub off-susp for not more than 24 mos. Tran. §16-404(c)(2) A person, who has accumulated the requisite number of points is subject to the following revocation periods. These periods are based on the **number of previous revocations** a person has been subjected to regardless of their basis: **6 mos** for a 1st revocation; **1 yr** for a 2nd revocation; **18 mos** for a 3rd revocation; and, **2 yrs** for a 4th or subsequent revocation. Tran. §16-208(b) Important. See Ignition Interlock below. **Special Note:** A person, who has been convicted of two Driving While Under the Influence (of alcohol or drugs and alcohol) offenses w/n 2 yrs, would accumulate 16 points on their driving record and be subject to license revocation instead of suspension. Persons <18 years Old. **Susp** for **6 mos** if they accumulate 6 points; **susp** for **1 yr** if they accumulate 2 additional points. Tran. §16-206(b) These suspensions may be modified (i.e., they are not mandatory). Tran. §16-206(c)(5)

Ignition Interlock. Under Tran. §16-404.1, the licensing agency may establish an ignition interlock program for persons who have been convicted of alcohol related driving offenses. Note: This program does not apply to persons who have been convicted of driving while under the influence of a controlled substance. A person, who is subject to license **suspension** for a conviction of Driving While Under the Influence (of alcohol, drugs or a combination of alcohol and drugs), may have their suspension periods reduced if they participate in the ignition interlock program. These reductions are as follows: 1st off-susp reduced up to 15 dys, if they participate in the program for 5 months; 2nd off (at least 5 yrs after 1st)-susp reduced up to 30 dys, if they participate in the program for 5 months; 2nd off (w/n 5 yrs) or 3rd off-susp reduced up to 45 dys, if they participate in the program for 12 months; and, 4th or sub off-susp reduced up to 6 mos, if they participate in the program for 24 months. Tran. §16-404(c)(3) A person, who is subject to license **revocation** following a conviction for either Driving While Under the Influence (of alcohol, drugs or a combination of alcohol and drugs) or for Driving While Intoxicated or Intoxicated Per Se, may have their license suspended in lieu of revocation if they participate in the ignition interlock program. The suspension periods imposed, including any reduced periods for ignition interlock use, are the same as for suspensions imposed for Driving While Under the Influence. Tran. §16-404.1(b)(4)(iii) Note: A court order requiring the use of an ignition interlock device is not affected by these provisions. Tran. §16-404.1(f) Persons Under 21 Years Old. A person under 21 years old, who is applying for a license following a conviction for any alcohol driving offense, may be required to participate in the "ignition interlock" program for not more than 3 yrs. Tran. §16-113(a)(4) Persons Who Have Violated the Admin. Per Se or Implied Consent Laws. These persons may obtain restricted driving privileges if they participate in the "ignition interlock' program for 1 yr. Tran. §16-205.1(n)(2), (3) & (4)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of Withdrawal:	**None** Tran. §§16-205, 16-206(5), 16-208, 16-404.1 & 16-405
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** Alcohol education/treatment required as a condition of probation. Any offender may be required to attend a driver improvement or an alcohol education program as a condition or reinstatement of their driving privilege. Health-General §8-404, Tran. §16-212 and Art. 27, §§639(b) & 641(a)(1)(ii)(1)
Alcohol Treatment:	**Yes** See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	See Footnote No. 1 on p. 3-228 concerning either (1) vehicle registration suspension/revocation or (2) vehicle impoundment/ immobilization based on driving after a license has been suspended/revoked for a drunk driving offense.
Miscellaneous Sanctions Not Included Elsewhere:	**Child Endangerment.** I. Driving while intoxicated/intoxicated per se[1] while transporting a "minor"[2]: 1st off-Jail not more than **2 yrs**/fine-not more than **$2,000**; 2nd off[3]-Jail not more than **3 yrs**/fine-not more than **$3,000**; 3rd and sub off[3]-Jail not more than **4 yrs**/fine-not more than **$4,000**. II. Driving while und r the influence while transporting a "minor"[2]: 1st off-Jail not more than **6 mos**/fine-not more than **$1,000**; 2nd and sub off[3]-Jail not more than **1 yr**/fine-not more than **$2,000**. Tran. §27-101(q) **Negligent Related Drunk Driving Which Causes a Life Threatening Injury.**[4] While intoxicated/intoxicated per se[1]-Misd-Jail not more than **3 yrs**/fine-not more than **$5,000** II. While under the influence of alcohol-Misd-Jail not more than **2 yrs**/fine-not more than **$3,000** III. While under the influence of drugs-Misd-Jail not more than **2 yrs**/fine-not more than **$3,000**. IV. While under the influence of a controlled dangerous substance-Misd-Jail not more than **2 yrs**/fine-not more than **$3,000** Art. 27, §388B **Provisional Licensee.** A provisional licensee is subject to the following **additional** sanctions, 1st alcohol driving off- "driver improvement program" (mand); 2nd alcohol driving off-**Susp-not more than 30 dys**; 3rd or sub alcohol driving off-**Susp/Rev-not more than 180** dys This action is not mand. Tran. §16-213

[1]"Intoxicated per se" is defined as a BAC/BrAC ≥0.10 at the time of testing. Art. 27, §§388A & 388B and Tran. §11-127.1 The offense involves operating motor vehicle while intoxicated per se. For standards, see Footnote No. 3 on p. 3-221.
[2]A "minor" is generally a person <18 yrs old. Art. 1, §24(b)(2)
[3]For sanction enhancement purposes, a prior off. includes any type prior drunk driving off. whether or not related to child endangerment.
[4]For these offenses, 12 points are assessed and this results either in a **6 mo** rev, if this is a 1st rev, **1 yr** rev if this is a 2nd rev or **18 mo** if this is a 3rd rev. These revocations are not mand. Tran. §§16-208(b), 16-402(a)(29), 16-404(a)(3)(ii) and 16-405(a) & (b)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:	**Yes** I. Death caused by driving a vehicle in a grossly negligent manner (felony) Art. 27, §388 II. Death caused by driving in a vehicle in a negligent manner either while intoxicated or intoxicated per se[1] (felony) Art. 27, §388A(b) III. Death caused by driving in a vehicle in a negligent manner while under the influence of alcohol (felony) Art. 27, §388A(c) IV. Death caused by driving in a vehicle in a negligent manner while under the influence of drugs (felony) Art. 27, §388A(d) V. Death caused by driving in a vehicle in a negligent manner while under the influence of a controlled dangerous substance (felony) Art. 27, §388A(e)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	I. Death caused by driving a vehicle in a grossly negligent manner-Not more than **10 yrs**, II. Death caused by driving in a vehicle in a negligent manner either while intoxicated or intoxicated per se[1]-Not more than **5 yrs** III. Death caused by driving in a vehicle in a negligent manner while under the influence of alcohol-Not more than **3 yrs** IV. Death caused by driving in a vehicle in a negligent manner while under the influence of drugs-Not more than **3 yrs** V. Death caused by driving in a vehicle in a negligent manner while under the influence of a controlled dangerous substance-Not more than **3 yrs**
Mandatory Minimum Term:	**None**
Fine ($ Range):	I. Death caused by driving a vehicle in a grossly negligent manner-Not more than **$5,000** II. Death caused by driving in a vehicle in a negligent manner either while intoxicated or intoxicated per se[1]-Not more than **$5,000** III. Death caused by driving in a vehicle in a negligent manner while under the influence of alcohol-Not more than **$5,000** IV. Death caused by driving in a vehicle in a negligent manner while under the influence of drugs-Not more than **$5,000** V. Death caused by driving in a vehicle in a negligent manner while under the influence of a controlled dangerous substance-Not more than **$5,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** via the point system Twelve (12) points are assessed for these offenses.[2] Tran. §§16-402(a)(29), 16-404(a)(3)(ii) & 16-405(b)

[1]"Intoxicated per se" is defined as a BAC/BrAC ≥0.10 at the time of testing. Art. 27, §§388A & 388B and Tran. §11-127.1 The offense involves operating motor vehicle while intoxicated per se. For standards, see Footnote No. 3 on p. 3-221.

[2]Under the point system, an accumulation of 12 points results in license revocation. However, if a person needs to use a vehicle for employment reasons, they are allowed to accumulate 19 points before their license is revoked.

Other Criminal Actions Related to DWI: (continued)

Length of Term of Licensing Withdrawal:	**6 mos** rev, if this is a 1st rev; **1 yr** rev, if this is a 2nd rev; **18 mos** rev, if this is a 3rd rev; and, **2 yrs** rev, if this is a 4th or sub rev. Tran. §16-208(b)
Mandatory Action--Minimum Length of License Withdrawal:	**None** Note: A revocation may be denied, cancelled or modified if a defendant needs to operate a motor vehicle for employment purposes. Tran. §16-405(a)
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	Misd 1st off - Not more than **1 yr**; 2nd and subsequent offs-Not more than **2 yrs** Tran. §§16-303(c) & (d) & 27-101(h)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	1st off-Not more than **$1,000**; 2nd and subsequent offs-Not more than **$1,000** Tran. §27-101(h)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	1st off-**Rev**; 2nd and subsequent offs-**Rev** via the point system Tran. §§16-303, 16-402(a)(26), 16-404 & 16-405(b) Twelve (12) points are assessed for this offense. See Footnote No. 1.
Length of Term of License Withdrawal Action:	**6 mos** if a 1st rev; **1 yr** if a 2nd rev; **18 mos** if this is a 3rd rev; and, **2 yrs** rev, if this is a 4th or sub rev. Tran. §16-208(b)
Mandatory Term of License Withdrawal Action:	Note: Under Tran. §16-405(a), a rev may be denied, cancelled or modified if a person's employment or opportunity for employment would be adversely affected.

[1]I. If a person drives a motor vehicle while their license is suspended or revoked for an alcohol off, the registration of the motor vehicle they were driving may be suspended for not more than 120 dys. Tran. §§13-705.1, 16-303 & 27-101
II. In addition, if a person drives a motor vehicle while their license is suspended or revoked for an alcohol off, the vehicle used in the offense may be either impounded or immobilized for not more than 180 dys. Tran. §27-111(d)
*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: I. It is a misd to operate a CMV during a CDL disqualification. The sanction for this offense is a fine of not more than $500. Tran. §§16-808(9) & 27-101(a) & (b) II. The following sanctions apply to persons who violate a CDL out-of-service order. Under Tran. §16-812, a violator is subject to a CMV disqualification for the periods specified under Federal Regulations (49 CFR 383.51(d)). These periods are as follows: 1st violation-not less than 90 dys; 2nd violation (w/n 10 yrs)-not less than 1 yr; and, 3rd or subsequent violation (w/n 10 yrs)-not less than 3 nor more than 5 yrs. If the transportation of either hazardous materials or passengers was involved in the violation, the disqualification is as follows: 1st violation-not less than 180 dys; and, a subsequent violation (w/n 10 yrs)-not less than 3 nor more than 5 yrs. In addition, under Tran. §27-101.1, a violator is subject to a civil penalty of not less than $1,000 nor more than $2,500 as specified under Federal Regulations (49 CFR 383.53(b)(1)).

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[1] Art. 2B, §12-108(a) and Art. 27, §§400, 401A & 403 (Year Eff: 1982)
Minimum Age (Years) Possession:	**21** Art. 2B, §12-108(d)[2] & Art. 27, §400A There is an employment exception. However, a person under 18 yrs old "may not be engaged in the sale of alcoholic beverages." Art. 2B, §12-302(a)(1)
Minimum Age (Years) Consumption:	**None**[2&3]

[1]It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to "misrepresent" or make a "false statment" about their age in order to obtain alcoholic beverages. Art. 27, §400

[2]Article 2B, §12-108(d) provides that no licensee shall allow a person under 21 years old to either possess or consume alcoholic beverages on the licensed premises.

[3]Under Art. 27, §401A, no one may furnish alcoholic beverages to a person under 21 years old except in cases where either such beverages are served by members of the immediate family in a private residence or they are served as part of a religious ceremony.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** Note: For cases denying liability in this area, see *Felder v. Butler,* 438 A.2d 494 (1981), *Fisher v. O'Connor's, Inc.,* 452 A.2d 1313 (Md.App. 1982) (cert. den. by the Maryland Court of Appeals, 452 A.2d 1313) & *Moran v. Foodmaker,* 594 A.2d 587 (Md.App. 1991).
Dram Shop Actions-Social Hosts:	**No** *Kuykendall v. Top Notch Laminates, Inc.,* 520 A.2d 1115 (Md.App. 1987) (cert. den. by the Maryland Court of Appeals, 526 A.2d 954 (Md. 1987)) & *Hebb v. Walker,* 536 A.2d 113 (Md.App. 1988)
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** Art. 2B, §§10-401, 10-402, 12-108 & 16-503 See Footnote No. 1 below.
Term of Imprisonment:	Not more than **2 yrs**
Fine ($ Range):	Not more than **$1,000**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev** Art. 2B, §10-401 Note: For licenses issued by the Comptroller a monetary compromise of not more than $2,000 may be paid in lieu of a suspension. Art. 2B, §10-402
Length of Term of License Withdrawal:	The law does not specify at term of susp. for licenses issued by the Comptroller. However, if a license is revoked by the Comptroller, it is for **6 mos.** Note: The periods of license susp/rev may be longer for certain counties. Art. 2B, §10-404
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** Art. 2B §§10-401, 10-402, 12-108 & 16-503 See Footnote No. 1.
Term of Imprisonment:	Not more than **2 yrs**
Fine ($ Range):	Not more than **$1,000**

[1]In addition to these sanctions, Maryland law also provides for additional sanctions (jail terms, fines or administrative actions) in certain local jurisdictions. See Art. 2B, §16-507 for details.

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev** Art. 2B, §10-401 Note: For licenses issued by the Comptroller, a monetary compromise of not more than $2,000 may be paid in lieu of a suspension. Art. 2B, §10-402
Length of Term License Withdrawal:	The law does not specify at term of susp. for licenses issued by the Comptroller. However, if a license is revoked by the Comptroller, it is for **6 mos.** Note: The periods of license susp/rev may be longer for certain counties. Art. 2B, §10-404
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** However, this law is limited to certain public parking areas. Art. 2B, §19-301 et seq.
Anti-Consumption Law (Yes/No):	**Yes** Applies only to drivers Tran. §21-903

STATE:	**MASSACHUSETTS**
General Reference:	Massachusetts General Laws Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor[1] Ch. 90 §24(1)(a)(1)
Illegal Per Se Law (BAC):	**None**
Presumption (BAC):	**≥0.08**[2] The law's term is "permissible inference". Ch. 90 §24(1)(e)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Marihuana, Narcotic Drugs, **Depressants or Stimulant Substances** all as defined in Ch. 94C §1[3] or (2) Vapors of Glue Ch. 90 §24(1)(a)(1)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** Ch. 90 §24(1)(f)
Implied Consent Law Applies to Drugs (Yes/No):	**No**
Refusal to Submit to Chemical Test Admitted into Evidence:	**No** Prohibited by statute in both criminal and civil cases. Ch. 90 §24(1)(e) Such evidence is also prohibited by the State's constitution. *Opinion of the Justices to the Senate,* 591 N.E.2d 1073 (Mass. 1992) Evidence of refusal to submit to field sobriety tests is constitutionally prohibited. *Com. v. McGrail,* 647 N.E.2d 712 (Mass. 1995), & *Com. v. Grenier,* 695 N.E.2d 1075 (Mass.App.Ct. 1998)
Other Information:	**None**

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**None** Unless the defendant is brought in for treatment. Ch. 90 §24(1)(f)
Urine:	**None**
Other:	**None**

[1]The term "intoxicating liquor" includes beer and other alcoholic beverages. *Commonwealth v. Bridges,* 189 N.E. 616 (Mass. 1934) cited in *Commonwealth v. Cass,* 467 N.E.2d 1324 (Mass. 1984)

[2]Standard: Percent by weight of alcohol in the blood. Ch. 90 §24(1)(e) "Percent by weight" has been judicially defined as the number of grams of alcohol per 100 milliliters (cubic centimeters) of blood. *Commonwealth v. Brooks,* 319 N.E.2d 901 (Mass. 1974), & *Commonwealth v. Bernier,* 322 N.E.2d 414 (Mass. 1975)

[3]See *Com. v. Green,* 556 N.E.2d 387 (Mass. 1990), for situations concerning drunk driving offenses that are based upon a "narcotic" drug that is a derivative of one listed in the code.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Under Ch. 90F §9, a person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (Note: Ch. 90F §9 does not appear to apply to alcohol concentrations in urine. See the standards below.) or (2) are under the influence of alcohol or a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). Under Ch. 90F §11, a person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) refuse to submit to a test to determine either alcohol concentration or the presence of other drugs or (2) submit to such a test which discloses a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.). For a two or more test refuses or "failures" or for a combination of two or more such violations, the "disqualified" is for life (mand). In addition, a CMV operator who has any alcohol in their system must be placed "out-of-service" for 24 hours. Ch. 90F §§1, 9, 10 & 11

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alc. Screening is required for a 1st off. Ch. 90 §24(1)(a)(4)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	See Persons Under 21 Years Old below. I. **Susp-120 dys** (mand) II. If the person has had a previous drunk driving off conviction w/n 10 yrs-**Susp-180 dys** (mand) III. If the person has had 2 or more drunk driving off convictions w/n 10 yrs-**Susp-1 yr** (mand) Ch. 90 §§24(1)(f) & 24N
Other:	A person's driving privileges are restored either if the drunk driving charges are dismissed or if the person is found not guilt of such charges. Ch. 90 §§24(1)(f) & 24N

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 1 and Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off-Not more than **2½ yrs**[2]; 2nd off (w/n 10 yrs)-**60 dys to 2½ yrs**; 3rd off (w/n 10 yrs)-**180 dys to 2½ yrs** (or 2½ to 5 yrs in State prison) (felony); 4th off (w/n 10 yrs)-**2 to 2½ yrs** (or 2½ to 5 yrs in State prison) (felony); 5th and sub offs (w/n 10 yrs)-**2½ yrs** (or 2½ to 5 yrs in State prison) (felony) Ch. 90 §24(1)(a)(1) & Ch. 274 §1
Mandatory Minimum Term:	1st off-**No**; 2nd off-**30 dys**[3]; 3rd-**150 dys**[3]; 4th off-**12 mos**[3]; 5th and sub off-**24 mos**[3]

[1]DWI serious bodily injury offs Ch. 90 §24L: Imprisonment-**not more than 2½ yrs**; fine-**not less than $3,000**. Ch. 90 §24L(2) If either recklessness or negligence is involved in the off (felony): Imprisonment-**2½ to 10 yrs or 6 mos to 2½ yrs** in a house of correction; fine-not more than **$5,000**. A 6 mo imprisonment term appears to be mandatory but work release is available. Ch. 90 §24L(1) & Ch. 274 §1

[2]1st offenders may serve an imprisonment sentence on designated weekend, evenings or holidays. Ch. 90 §24(1)(a)(3)

[3]Work release is available for this period. See Rehabilitation on p. 3-236. Ch. 90 §24(1)(a)(1)

Persons Under 21 Years Old. I. For persons <21 but ≥18 yrs old-**Susp-180 dys** If a person does not have a previous drunk driving offense charge, the suspension may be waived if they participate in an alcohol education or treatment program. II. For persons <18 yrs old-**Susp-1 yr** (mand). However, for a 1st refusal, there is only a 180 mand susp if the person participates in an alcohol education or treatment program. Ch 90 §24P(a)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Leduc v. Com.*, 657 N.E.2d 755 (Mass. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:	
Amount ($ Range):	1st off-**$500 to $5,000**; 2nd off-**$600 to $10,000**; 3rd off-**$1,000 to $15,000**; 4th off-**$15,000 to $25,000**; 5th and sub offs-**$2,000 to $50,000** Ch. 90 §24(1)(a)(1)
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	For any off-30 hrs (minimum) via court order as a condition of probation Ch. 90 §24D
Restitution (eg Victim's Fund)	**Yes** (1) By a compensation fund Ch. 258A §1 et seq. or (2) by a defendant via probation Ch. 276 §92
Other:	**None**
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-234.
Administrative Per Se Law:	**Yes BAC ≥0.08**[1] (Persons under 21 years old-**BAC ≥0.02**[1])-**Susp** until the drunk driving charges are disposed of but not more than **90 dys** (mand) Ch.90 §24(1)(f)(2) Persons Under 21 Years Old. The following susps apply notwithstanding the finding concerning any offense (e.g. drunk driving). I. A person <21 but ≥18 yrs old, who has a **BAC ≥0.02**[1], has their license **suspd for 180 dys**. If the person does not have a previous drunk driving offense charge, the suspension may be waived if they participate in an alcohol education or treatment program. II. A person <18 yrs old, who has a **BAC ≥0.02**[1], has their license **susp for 1 yr** (mand). However, for a 1st violation, there is only a 180 dy mand susp if the person participates in an alcohol education or treatment program. Ch. 90 §24P(a)
Other:	I. If the law enforcement officer does not take action under the admim. per se law at the time of arrest, the court, at the time of arraignment shall suspend a defendant's license until the case is disposed of (but not more than 90 dys), provided the State establishes a *prima facie* showing that the defendant was operating a motor vehicle with a BAC ≥0.08 (persons under 21 yrs old BAC ≥0.02[1]). Ch. 90 §24N[2] II. A person's license may be suspended without a hearing if they have "committed" a violation of the motor vehicle laws that "constitute an immediate threat to the public safety." Ch. 90 §22(a)[3]

[1]Standard: Percent by wgt. of alcohol in the blood. See the *Brooks* and *Bernier* cases in Footnote No. 2 on p. 3-233.
[2]**Historical Note:** This section was amended by §10 of Chapter 25, Laws of 1994. A previous version of this provision was held to be constitutional on due process of law grounds. *Com. v. Crowell,* 529 N.E.2d 1339 (Mass. 1988)
[3]A person, who has been indicted for various traffic offenses, may be subject to licensing action under this statute. These actions do not violate the constitutional prohibition against double jeopardy. *Powers v. Com.,* 694 N.E.2d 324 (Mass. 1998)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:	See Persons Under 18 years old below.
Type of Licensing Action (Susp/Rev):	**Rev** for all offs Ch. 90 §24(1)(b) & (1)(c)
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**1 yr**; 2nd off (w/n 10 yrs)-**2 yrs**; 3rd off (w/n 10 yrs)-**8 yrs**; 4th off (w/n 10 yrs)-**10 yrs**; 5th and sub offs (w/n 10 yrs)-**Life**
Mandatory Minimum Term of Withdrawal:	1st off-**3 mos**[1] (**45 dys susp**[2] If the defendant is placed on probation and agrees to participate either in an alcohol education or, if necessary, in a treatment program. Ch. 90 §24D); 2nd Off-**6 mos**[1&3]; 3rd off-**2 yrs rev**[1]; 4th off-**5 yrs rev**[1]; 5th and sub offs-**Life**
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** 1st off-If the defendent consents, they may be placed on probation for not more than 2 yrs on the condition that thay attend a residential alcohol treatment program for not less than 14 dys and participate in an out patient counseling program. Ch. 90 §§24(1)(a)(4) & 24D &; 2nd and sub offs-In lieu of imprisonment, defendant may serve all or part of the mand imprisonment term in a residential alcohol treatment program. Ch. 90 §24
Alcohol Treatment:	**Yes** See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	I. **Special Surcharge.** A defendant must pay a surcharge of **$100** for the purpose of funding head injury treatment services. Ch. 90 §24(1)(a)(1) II. **Alcoholic Beverage Licensee Reporting.** The court shall inquire of a drunk driving offender, prior to sentencing, as to whether they were served alcoholic beverages at a licensed establishment. Any information obtained is to be transmitted to law enforcement authorities. Ch. 90 §24J

[1]Hardship driving privileges may be granted after this mandatory revocation period.
[2]If the person is under 21 years old, the mandatory license suspension period is 210 dys.
[3]The person must complete a residential treatment program before hardship driving privileges can be granted.

Persons Under 18 Years Old. Persons < 18 yrs old, who have been convicted of any DWI offense or vehicle homicide and who have not had their license suspended for a 0.02 admin per se violation, are subject to a 180 dy mand license susp for a 1st offense and a 1 yr mand license susp for a 2nd or subsequent offense. Ch. 90 §24P(b)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Misd A motor vehicle related death where there the offender was either under the influence of intoxicating substances or acted with either recklessness or negligence. See Footnote No.1. Ch. 90 §24G(b) & Ch. 274 §1
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**30 dys to 2½ yrs** Ch. 90 §24G(b)
Mandatory Minimum Term:	**None**
Fine ($ Range):	**$300 to $3,000** Ch. 90 §24G(b)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** Ch. 90 §24G(c) See Persons Under 18 Years Old on p. 3-236.
Length of Term of Licensing Withdrawal:	1st off-**10 yrs**; subsequent off-**life**
Mandatory Action--Minimum Length of License Withdrawal:	1st off-**10 yrs**; subsequent off-**life**
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd 60 dys to 2½ yrs** Ch. 90 §23 & Ch. 274 §1
Mandatory Minimum Term of Imprisonment:	**60 dys** However, a work release program is available.
Fine ($ Range):	**$1,000 to $10,000** Ch. 90 §23
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev**[2] Ch. 90 §23
Length of Term of License Withdrawal Action:	Susp/rev is extended for an additional period of **1 yr.** Ch. 90 §23
Mandatory Term of License Withdrawal Action:	Same as above.

[1]Homicide by motor vehicle while under the influence of an intoxicating substance and where there is either recklessness or negligence (felony): Imprisonment-**2½ to 15 yrs** (mandatory imprisonment of **1 yr** However, work release is available); fine-**not more than $5,000**. Ch. 90 §24G(a) & Ch. 274 §1

[2]If the vehicle used in offense is not owned by the defendant, its registration shall be revoked for not more than 30 dys. Ch. 90 §23

Special Note: A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. Ch. 90F, §5(8) However, Ch. 90F does not provide sanctions for such a prohibition. Note: Although the law is unclear, the general sanctions for driving while license is either suspended or revoked may apply to this prohibition. These sanctions are as follows: 1st offense, imprisonment for not more than 10 dys and/or a fine of $500 but not more than $1,000; and, subsequent offense, imprisonment for 60 dys but not more than 1 yr (There appears to be no fine sanction.). For either a 1st or subsequent offense, an additional period of license suspension or revocation of 60 dys. Ch. 90, §23

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** Ch. 90 §22F
Grounds for Being Declared an Habitual Offender:	Any combination of three or more serious traffic offenses (e.g., DWI, reckless driving, ect.) (w/n 5 yrs) or 12 convictions (w/n 5 yrs) for traffic offs (including serious offs) for which a person may or must receive at a 30 dy license susp/rev.
Term of License Rev While Under Habitual Offender Status:	**4 yrs** Note: If the defendant has a proven hardship, a license may be issued after **1 yr**. Ch. 90 §22F
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Felony** Ch. 274 §1
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **2 yrs** Ch. 90 §23
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$500 to $5,000** Ch. 90 §23
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**Rev**[1] Rev is extended for an additional 60 dys. Ch. 90 §23

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes Limited**[2] Ch. 38 §4A
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** The law requires medical examiners to submit to the police laboratory blood samples of drivers who die of injuries received in auto accidents within 4 hrs of an accident. However, the law only applies if, at the time of the accident, (1) the driver was the only occupant of the vehicle and (2) no other individuals were involved.
Vehicle Passengers:	**No**
Pedestrian:	**No**[2]

[1]If the vehicle used in offense is not owned by the defendant, its registration shall be revoked for not more than 30 dys. Ch. 90 §23
[2]**Historical Note:** Ch. 38 §6A, which covered all deceased drivers and pedestrians in any type of traffic accident, was repealed.

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** Ch. 138 §§34 & 34A (Year Eff: 1985)
Minimum Age (Years) Possession:	**21** Applies to the transportation of alcoholic beverages by an unattended person under 21. There is an exemption for persons 18 and 19 yrs old for employment purposes. Ch. 138 §34C
Minimum Age (Years) Consumption:	**None**
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Adamain v. Three Sons,* 233 N.E.2d 18 (Mass. 1967), *Cimino v. The Milford Keg, Inc.,* 431 N.E.2d 920 (Mass.1982), & *Michnik-Zilberman v. Gordon's Liquor, Inc.,* 453 N.E.2d 430 (Mass. 1983)
Dram Shop Actions-Social Hosts:	**Yes** *McGuiggan v. New England Telephone Co.,* 496 N.E.2d 141 (Mass. 1986), & *Langemann v. Davis,* 495 N.E.2d 847 (Mass. 1986) See Footnote Nos. 1 & 2. An employer is not liable as a social host for the injuries caused by an intoxicated employee, who storied and consumed alcoholic beverages at work with the employer's permission, so long as such beverages were not supplied by the employer. *Kelly v. Avon Tape, Inc.,* 631 N.E.2d 1013 (Mass. 1994)
Other:	A patron, who sustains injuries as a result of becoming intoxicated at a licensed establishment, may bring a negligence cause action for such injuries against the licensee. *O'Hanley v. Ninety-Nine, Inc.,* 421 N.E. 2d 920 (1981) (modified by Ch. 231 §85T)[3] However, a social host will not be liable for the injuries sustained by an intoxicated (adult) guest. *Manning v. Nobile,* 582 N.E.2d 942 (Mass. 1991), and Ch. 231 §85T. An adult is a person ≥19 years old. *Hamilton v. Ganias,* 632 N.E.2d 407 (Mass. 1994)

[1]However, no social host liability to a third part was found in situations where the host did not provide alcoholic beverages to the injury causing guest. *Alioto v. Marnell,* 520 N.E.2d 1284 (Mass. 1988), *Ulwick v. DeChristopher,* 582 N.E.2d 954 (Mass. 1991), *Wallace v. Wilson,* 575 N.E.2d 1134 (Mass. 1991), & *O'Flynn v. Powers,* 646 N.E.2d 1091 (Mass.App.Ct. 1995) This same holding also applies to business social hosts. *Mosko v. Raytheon Co.,* 622 N.E.2d 1066 (Mass. 1993)

[2]A social host, who serves alcoholic beverages to a guest while in a licensed establishment, may be held liable for injuries caused by the guest as the result of their intoxication caused by such service. Note: In the case decided by the court, the employees of the licensed establishment were unaware of the guest's (patron's) intoxication. As a result, the establishment was not liable for the injuries caused by the intoxicated individual. *Makynen v. Mustakangas,* 655 N.E.2d 1284 (Mass.App.Ct. 1995)

[3]This may included situations where the licensee does not actually serve alcoholic beverages to a patron. E.g., at a private party hosted on the licensee's premises where a minor became intoxicated and was subsequently struck and killed by a vehicle. *Tobin v. Norwood Country Club, Inc.,* 661 N.E.2d 627 (Mass. 1996)

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	See Footnote No. 1.
Type of Criminal Action:	**Misd** Ch. 138 §§62 & 69
Term of Imprisonment:	Not less than **1 mo** and not more than **1 yr**
Fine ($ Range):	Not less than **$50** and not more than **$500**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Susp, rev or cancellation Ch. 138 §64
Length of Term of License Withdrawal:	If **rev** is imposed, a licensee is disqualified from receiving a license for **1 yr** after the expiration of the term of the revoked license. Note: There is no established period for either a suspension or a cancellation.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** Ch. 138 §34
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$2,000**
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes** Susp, rev or cancellation Ch. 138 §64
Length of Term License Withdrawal:	If **rev** is imposed, a licensee is disqualified from receiving a license for **1 yr** after the expiration of the term of the revoked license. Note: There is no established period for either a suspension or a cancellation. Note: A licensee, who is convicted of a violation w/n 24 mos of a previous offense, may be required to obtain liquor liability insurance to a limit of not less than $100,000 to any one person and $200,000 to all persons. Ch. 136, §64A & Ch. 138, §67 (¶6)
Anti-Happy Hour Laws/Regulations:	**Yes** 204 CMR 4.00 (Regulation)
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** This law applies only to drivers. Ch. 90 §24I

[1]See II under Miscellaneous Sanctions for drunk driving offenses on p. 3-236.

STATE:	**MICHIGAN**
General Reference:	Michigan Compiled Laws Annotated and Michigan Liquor Control Code (MLCC) of 1998* **Special Note:** This State's drunk driving laws and certain statutes related to such laws were amended by various acts in 1998. These amendments become effective on October 1, 1999. See Appendix B for a summary of Michigan's laws as of this date.
Basis for a DWI Charge:	
Standard DWI Offense:	1) Visibly impaired by intoxicating liquor §257.625(3) 2) Under the influence of intoxicating liquor §257.625(1)(a)
Illegal Per Se Law (BAC/BrAC):	**≥0.10**[1&2] §257.625(1)(b) Persons Under 21 Years Old. **Any Bodily Alcohol Content**[3] §257.625(6)
Presumption (BAC/BrAC):	A BAC/BrAC/UrAC **>0.07** but **<0.10**[1&2] is a presumption of impairment. A BAC/BrAC/UrAC **≥0.10**[1&2] is a presumption of driving while under the influence. §257.625a(9)(b) & (c)
Types of Drugs/Drugs and Alcohol:	Under the influence of or visibly impaired by (1) **A Controlled Substance** or (2) a Combination of Liquor and a Controlled Substance. §§257.625(1)(a) & (3)
Other:	For Commercial Motor Vehicle Operators, see p. 3-246.
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** §257.625a(2) For CMV operators, see §§257.319d & 257.625a(4).
Implied Consent Law: Arrest Required (Yes/No):	**Yes** §257.625c(1)(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §257.625c(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes Limited** (Criminal cases) §257.625a(10) In driving while under the influence/illegal per se cases, evidence of a refusal to submit to a chemical test may be admitted but only "for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant."
Other Information:	**Special Note:** Following a refusal to submit to a chemical test under the implied consent law, a test (for alcohol concentration or controlled drugs) can be required via a court order. §§257.625a(6)(b)(iv) & *People v. Wurm,* 404 N.W.2d 235 (Mich.App. 1987)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or urine alcohol concentration of 0.10 or more.
[2]Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §§257.625(1)(b), (6)(a) & (b), 257.625a(9)(b) & (c) and 257.625g(4)
[3]The term "any bodily alcohol content" means either (1) a BAC/BrAC/UrAC of **≥0.02 but ≤0.07** (For Standards, see Footnote No. 2 above.) or (2) "[a]ny presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony." §257.625(6)(a) & (b)

*Citations are to the Michigan Complied Laws Annotated unless otherwise indicated by a reference to the MLCC.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §257.625c(1)
Urine:	**Yes** §257.625c(1)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Limited** A person under 21 years old, who is charged with either with driving while under the influence, driving while visibly impaired or illegal per se offenses under §257.625(1) & (3), cannot enter a plea of either guilty or *nolo contendere* to driving with "any bodily alcohol content" under §257.625(6). §257.625(15)
Pre-Sentencing Investigation Law (PSI) (Yes/No:	**Yes**[1] Alcohol & Drug (Screening & Assessment Required) §257.625b(5)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	Civil infraction-Fine not more than **$100** §§257.625a(2)(d), 257.741 et seq. & 257.907 Note: It is a misdemeanor for a CMV operator to refuse to submit to a PBT. See DWI Offenses and Commercial Motor Vehicles on p. 3-246. §§257.319d & 257.625a(4)
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal-**6 mo susp** Note: A restricted/hardship license may be issued. 2nd and subsequent refusals (w/n 7 yrs)-**1 yr susp** (mand) §§257.323c and 257.625f(1) & (4)
Other:	See "Other" under Pre-DWI Conviction Licensing Action on p. 3-245.

[1]For offenses where a defendant may be sentenced to prison for more than 1 yr or where an offense is a felony, a victim has a right to submit a statement and have it made a part of the pre-sentence investigation report. §§780.763 & 780.764

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1) Driving while visibly impaired: (1) Misd-Not more than **90 dys**; (2) Where there has been a previous DWI offense of any type w/n 7 yrs or two previous DWI offenses of any type w/n 10 yrs-Misd-Not more than **1 yr** §257.625(9) 2) Driving while under the influence/Illegal per se: 1st off-Misd-Not more than **90 dys**; 2nd off (w/n 7 yrs)-Misd-Not more than **1 yr**; 3rd and Subsequent offs (w/n 10 yrs)-Felony-**1 to 5 yrs** §257.625(7) 3) Any DWI offense where there is a "serious impairment of a body function"[1]-Felony-not more than **5 yrs**[2] §257.625(5) 4) Persons Under 21 Years Old. **Any Bodily Alcohol Content-None**
Mandatory Minimum Term:	1) Driving while visibly impaired: Where there has been a previous DWI offense of any type w/n 7 yrs or two previous DWI offenses of any type w/n 10 yrs, the court has the option of either (1) imposing some type of mand jail term (length is not specified in the statute) plus a discretionary period of community service not to exceed 90 dys or (2) a mandatory period of community service (10 dys) plus a discretionary jail term. §257.625(9) 2) Driving while under the influence/Illegal per se: 1st off-**None**; 2nd off (w/n 7 yrs)-jail for not less than **48 con hrs**; 3rd and sub off-**1 yr**[3] §257.625(7) 3) Any DWI offense where there is a "serious impairment of a body function"-**None** 4) Persons Under 21 Years Old. **Any Bodily Alcohol Content-N/A**

[1]A "serious impairment of a body function" includes, but is not limited to, (1) the loss or use of a limb, eye, or ear, (2) visible disfigurement, (3) a comatose state for more than 3 dys, (4) brain damage, (5) scull or other serious bone fracture or (6) subdural hemorrhage or hematoma. §257.625(5)

[2]A person, who commits a 2nd felony driving while under the influence or illegal per se offense (i.e., a 4th off w/n 10 yrs), is subject to the provisions of the general criminal habitual offender law. Under this law, such an offender's imprisonment sanction may be enhanced by not more than 1½ times the longest term prescribed for a 1st felony off. §769.10(1)(a) & *People v. Bewersdorf,* 475 N.W.2d 231 (Mich. 1991)

[3]This sanctions appears mandatory. The law provides that the term of imprisonment for this offense cannot be suspended. §257.625(7)(d)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:	
Amount ($ Range):	1) Driving while visibly impaired-Not more than **$300**; Where there has been a previous DWI offense of any type w/n 7 yrs or two previous DWI offenses of any type w/n 10 yrs-**$200 to $1,000** §257.625(9) 2) Driving while under the influence/illegal per se: 1st off-**$100 to $500**; 2nd off w/n 7 yrs-**$200 to $1,000**; 3rd and subsequent off (w/n a 10-yrs) - **$500 to $5,000** §257.625(7) 3) Any DWI offense where there is a "serious impairment of a body function"-**$1,000 to $5,000** §257.625(5) 4) Persons Under 21 Years Old. **Any Bodily Alcohol Content**-1st off-Not more than **$250**; 2nd and sub off (w/n 7 yrs)[1]-Not more than **$500** §257.625(10)
Mandatory Min. Fine ($):	1) Driving while visibly impaired-Where there has been a previous DWI offense of any type w/n 7 yrs or two previous DWI offenses of any type w/n 10 yrs-**$200** (possible)[2] 2) Driving while under the influence/illegal per se: 1st off-**$100** (possible)[2]; 2nd off-**$200** (possible)[2]; 3rd off-**$500** (possible)[2] 3) Any DWI offense where there is a "serious impairment of a body function"-**None** 4) Persons Under 21 Years Old. **Any Bodily Alcohol Content-None**
Other Penalties:	
Community Service:	1) Driving while visibly impaired-Not more than **45 dys**; Where there has been a previous DWI offense of any type w/n 7 yrs or two previous DWI offenses of any type w/n 10 yrs-**10 to 90 dys** §257.625(9) 2) Driving while under the influence/illegal per se : 1st off-Not more than **45 dys**; 2nd off-**10 to 90 dys**[3]; 3rd off-**None** §257.625(7) 3) Any DWI offense where there is a "serious impairment of a body function"-**None** 4) Persons Under 21 Years Old. **Any Bodily Alcohol Content**-1st off-Not more than **45 dys**; 2nd and sub off (w/n 7 yrs) (See Footnote No. 1.)-Not more than **60 dys** §257.625(10)
Restitution (eg Victim's Fund)	**Yes**[4]
Other:	**Assessments.** A person convicted of a crime must pay the following assessments. For a felony, the assessment is **$60** and for a misdemeanor it is **$50**. §780.905

[1]For purposes of sanction enhancement, a prior offense includes any previous drunk driving offense conviction.
[2]See *Wayne City Prosecutor v. Wayne Circuit Judge,* 397 N.W.2d 274 (Mich.App. 1986).
[3]**Comment:** The law does not appear to allow for the substitution of community service for the minimum mandatory term of imprisonment.
[4]The State has a victims' compensation fund and, in addition, provides for direct compensation to victims by the defendant via court oredered restitution. §§18.351 et seq., 771.3(2)(d) and Act 341, Public Acts of 1993

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law: **None**
Other: **Special Note:** Under §257.625g, if a driver either refuses to submit to a chemical test or if they submit to such test which indicates an "unlawful alcohol content"[1], their license is confiscated and destroyed by the police. A temporary license is issued and is valid until the conclusion of the DWI criminal proceedings.

Post DWI Conviction Licensing Action: See Footnote No. 2.
Type of Licensing Action (Susp/Rev):

1) Driving while visibly impaired: 1st off-**Susp** If there has been a prior DWI offense conviction of any type w/n 7 yrs-**Susp** If there have been two prior DWI offense convictions of any type w/n 10 yrs-**Rev** §§257.303(1)(f), (2) & (4), 257.319(4) and 257.625b(6)
2) Driving while under the influence/illegal per se: 1st off-**Susp**; 1st off where there has been a prior impaired off w/n 7 yrs-**Susp**; 2nd off-**Rev**; 3rd and sub offs-**Rev** §§257.303(1)(f), (2) & (4) and 257.625b(6)
3) Any DWI offense where there is a "serious impairment of a body function"-**Rev** §§257.303(1)(f), (2) & (4) and 257.625b(6)
4) Persons Under 21 Years Old. **Any Bodily Alcohol Content**-1st and sub off-**Susp** §257.625b(6)(d)

Term of License Withdrawal (Days, Months, Years, etc.):

1) Driving while visibly impaired: 1st off-**90 dys-1 yr** (If the offense involved driving while impaired by a controlled substance or a controlled substance and alcohol-**6 mos to 1 yr**) If there has been a prior DWI offense conviction of any type w/n 7 yrs-**6 mos to 2 yrs** If there have been two prior DWI offense convictions of any type w/n 10 yrs-**1 yr** (5 yrs See Footnote No. 1 on p. 3-246.) §§257.303(1)(f), (2) & (4), 257.319(4) and 257.625d(6)
2) Driving while under the influence/illegal per se: 1st off-**6 mos-2 yrs**; 1st off where there has been a prior impaired off w/n 7 yrs-**6 mos-2 yrs**; 2nd off-**1 yr**; 3rd and subsequent offs-**5 yrs** §§257.52, 257.303(1)(f), (2) & (4), 257.319(4) and 257.625b(6)
3) Any DWI offense where there is a "serious impairment of a body function"-1st off-**1 yr**; 2nd or sub. off (w/n 7 yrs)-**5 yrs** §§257.52, 257.303(1)(f), (2) & (4), 257.319(4) and 257.625b(6)
4) Persons Under 21 Years Old. **Any Bodily Alcohol Content**-1st off-**30 to 90 dys**; 2nd or sub off (w/n 7 yrs)-**90 dys to 1 yr** §257.625b(6)(d)

[1]An "unlawful alcohol content" means either (1) a person under 21 yrs old was operating motor vehicle with a BAC/BrAC/UrAC ≥0.02, (2) a person with a CDL was operating a CMV with a BAC/BrAC/UrAC ≥0.04 or (3) a person was operating any motor vehicle with a BAC/BrAC/UrAC ≥0.10. For standards, see Footnote No. 2 on p. 3-241. §257.625g(4)
[2]Licensing action under the point system. Vehicle manslaughter or driving while under the influence/illegal per se-6 points. Driving while impaired-4 points. Twelve (12) points in two (2) years may result in suspension/revocation. A susp cannot be longer than one (1) year. §§257.320(1)(d), (2) & (4) and 257.320a(1)(a), (b) & (f)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of Withdrawal:

1) Driving while visibly impaired: **None** (1st off) (A restricted/hardship license may be issued. If there has been a prior DWI offense conviction of any type w/n 7 yrs-**60 dys** (A restricted license may be issued after the 60 dy period.) If there have been two prior DWI offense convictions of any type w/n 10 yrs-**1 yr** (5 yrs[1]) §§257.52, 257.303(1)(f), (2) & (4) and 257.625b(6)
2) Driving while under the influence/illegal per se: 1st off-**30 dys** (A restricted hardship license may be issued after this period of time.); 1st off where there has been a prior impaired off w/n 7 yrs-**60 dys** (A restricted hardship license may be issued after this period of time.); 2nd off-**1 yr**; 3rd and subsequent off (felony)-**5 yrs**[1&2]
3) Any DWI offense where there is a "serious impairment of a body function"-1st off-**1 yr**; 2nd or sub. off (w/n 7 yrs)-**5 yrs** §§257.52, 257.303(1)(f), (2) & (4), 257.323(5) and 257.625b(6)
4) Persons Under 21 Years Old. **Any Bodily Alcohol Content**-1st off-**None** (A person is eligible for restricted driving privileges.); 2nd or sub off (w/n 7 yrs)-**90 dys** (A person is eligible for restricted driving privileges after the 90 dy period.) §257.625b(6)(d)

Ignition Interlock. For a **any** DWI off (driving while visibly impaired, driving while under the influence, illegal per se or, for persons under 21 yrs old, with any bodily alcohol content) where the defendant is allowed to operated a vehicle on a restricted license, the court may order that the person only drive vehicles that are equipped with an "ignition interlock" device. §257.625b(8)

[1]If there has been a previous rev of any type within 7 yrs, the rev period is 5 yrs.
[2]*Dudley v. Secretary of State,* 514 N.W.2d 167 (Mich.App. 1993)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04, (2) are under the influence of or visibly impaired by intoxicating liquor or a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration or the presence of controlled substances. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, a revocation for not less than 10 yrs (10 yrs mand). A person who operates a CMV with a BAC/BrAC/UrAC ≥0.04 but <0.07 commits a misdemeanor. For a 1st off, the person is subject to imprisonment for not more than 90 days and/or a fine of not more than $300; for a 2nd or subsequent conviction w/n 10 yrs, a person is subject to imprisonment for not more than 1 yr and/or a fine of not more than $1,000. In addition, a CMV operator who has a BAC/BrAC/UrAC ≥0.015 must be placed "out-of-service" for 24 hours. Finally, it is a misdemeanor for a person to refuse to submit to a preliminary breath test (PBT) while operating a CMV; the sanctions for this offense are imprisonment for not more than 90 dys and/or a fine of not more than $100. Note: The standards for BAC, BrAC and UrAC are respectively as follows: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §§257.1c, 257.4b, 257.7a, 257.312e, 257.319b, 257.319d, 257.625a(5) & 257.625m

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	
Rehabilitation:	
Alcohol Education:	**Yes** §257.625b(5)
Alcohol Treatment:	**Yes** §257.625b(5)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**Prosecution Costs.** For any DWI offense, the defendant may be ordered by the court to pay the costs of the prosecution. §257.625(11)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes Felony** Any DWI offense related death §257.625(4)[1] **Misd** Death caused by driving at an immoderate rate of speed, in a careless, reckless, or negligent manner but not wilfully or wantonly. §750.324
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Felony-Not more than **15 yrs** §257.625(4) Misd-Not more than **2 yrs** §750.324
Mandatory Minimum Term:	**None**
Fine ($ Range):	Felony-**$2,500 to $10,000** §257.625(4) Misd-Not more than **$2,000** §750.324
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Felony-**Rev** §§257.625b(5) Misd-**Susp** §257.319(1)(c) (6 points are also accumulated for each off §257.320a(1)(a))
Length of Term of Licensing Withdrawal:	Felony-1st off-**1 yr**; 2nd or sub. off (w/n 7 yrs)-**5 yrs** §§257.52 Misd-**90 dys-2 yrs** §257.319(1)(a)
Mandatory Action--Minimum Length of License Withdrawal:	Felony-1st off-**1 yr**; 2nd or sub. off (w/n 7 yrs)-**5 yrs** §§257.52 & 257.625b(5) Misd-**None**
Other:	See Assessments on p. 3-244.

[1]The Michigan Supreme Court has held §257.625(4) constitutional. *People v. Lardie,* 551 N.W.2d 656 (Mich. 1996)

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	1st off Misd-**Not more than 90 dys**; 2nd and subsequent offs Misd-**Not more than 1 yr** §257.904(1)(a) & (b)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	1st off-Not more than **$500**; 2nd and subsequent offs-Not more than **$1,000** §257.904(1)(a) & (b) See Assessments on p. 3-244.
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp or rev**[1] §257.904(2) & (3)
Length of Term of License Withdrawal Action:	The original license susp or rev is extended for a like period.
Mandatory Term of License Withdrawal Action:	The original license susp or rev is extended a like period.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

[1]For a 1st or subsequent offense, the registration plates of the vehicle involved in the offense shall also be "cancelled". §257.904(1)(b) Also, vehicle impoundment for not more than 120 dys. §257.904b

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: A person, who operates a CMV while their CDL privilege is suspended, is subject to the sanctions given above for the offense of driving while suspended or revoked. §257.904 A person, who operates a CMV while under a CDL out-of-service order, commits a misd offense and is subject to an imprisonment term of not more than 90 dys and/or a fine of not more than $100. §257.319d

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §257.625a(3)(f)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** §257.625a(3)(f)
Vehicle Passengers:	**No**
Pedestrian:	**No**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1978) MLCC §§701(1), 703(1) & 801(2)
Minimum Age (Years) Possession:	**21** Employment exemption MLCC §703(9)
Minimum Age (Years) Consumption:	**21**[1] There is an exemption for religious services. MLCC §703(12)
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** MLCC §801(3) & (10)[2]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	The Dram Shop Law is the exclusive remedy against licensees. MLCC §801(10) Case Law abrogated by the Dram Shop Law[2]
Dram Shop Actions-Social Hosts:	**Yes Limited to minors' actions** *Longstreth v. Gensel,* 377 N.W.2d 804 (Mich. 1985), *Trayler v. Koposky,* 384 N.W.2d 819 (Mich. App. 1986), & *Gardner v. Wood,* 414 N.W.2d 706 (Mich. 1987)[3,4&5]
Other:	An intoxicated patron (or a person related to them) cannot maintain an action for damages against a licensee as a consequence of their intoxication. MLCC §801(9)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** MLCC §§707, 901 & 909(2)
Term of Imprisonment:	Not more than **6 mos**[6]
Fine ($ Range):	Not more than **$500**[6] See Assessments on p. 3-244.

[1]A person <21 yrs old may consume an alc. bev. as part of a course at a post secondary educational institution. MLCC §703(11)
[2]The law applies (1) to damages/injuries caused by visibly intoxicated persons or those under 21 years old and (2) only to retail licensees not wholesalers. *Tennille v. Action Distributing,* 570 N.W.2d 130 (Mich.App. 1997) For abrogated common law cases, see *Jones v. Bourrie,* 120 N.W.2d 236 (Mich. 1963), & *Longstreth v. Fitzgibbon,* 335 N.W.2d 677 (Mich. App. 1983).
[3]Nevertheless, a social host is not liable for the injures caused intoxicated minor guests who commit criminal acts. The court felt that there so no "foreseeability" that such minors would commit a crime and distinguished the *Longstreth* case which involved injures related to the use of motor vehicles by intoxicated minor guests. *Rogalski v. Tavernier,* 527 N.W.2d 73 (Mich.App. 1995)
[4]However, the courts have found no liability to business social hosts who have furnished alcoholic beverages to injury causing adult business guests. *Leszczynski v. Johnson,* 399 N.W.2d 70 (Mich.App. 1986), *Millross v. Plum Hollow Golf Club,* 413 N.W.2d 17 (Mich. 1987), & *Kuehn v. Edward Rose & Sons,* 472 N.W.2d 59 (Mich.App. 1991)
[5]A law enforcement officer, who was injured by an intoxicated person while on duty, cannot maintain a dram shop action against the licensee who served alcoholic beverages to the person. *McCaw v. T&L Operations, Inc.,* 550 N.W.2d 852 (Mich.App. 1996)
[6]These sanctions appear to apply only to licensees but not to licensees' employees. For employees, a violation appears to be a misdemeanor with the following sanctions: Jail-not more than 90 days; fine-not more than $100. MLCC §§909(1) & 750.504 under the Michigan Complied Law Annotated

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or Rev** MLCC §§903(1) & 907(3)
Length of Term of License Withdrawal:	Period of license susp is not specified in the statute; period of license revocation is 2 yrs Note: A civil fine of not more than $300 may be assessed in addition to or in lieu of a susp or rev.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd**[1] MLCC §§701, 801(2), 901 & 909(2)
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$500** See Assessments on p. 3-244.
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or Rev**[2] MLCC §§903(1) & 907(3)
Length of Term License Withdrawal:	Susp period is not specified; revocation is 2 yrs A civil fine of not more than $1,000 may be assessed in addition to or in lieu of susp/rev.
Anti-Happy Hour Laws/Regulations:	**Yes** R 436.1438 (regulation)
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes**[3] §257.624a
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers MLCC §915(1) The law states that "[a]lcoholic liquor shall not be consumed on the public highways."

[1]The State/local police cannot charge a licensee with violating the law prohibiting the sale of alcoholic beverages to persons under 21 years old, unless these law enforcement agencies also charge the minors involved in the offense (except minors being used as undercover agents) with violating the law prohibiting such persons from purchasing or attempting to purchase such beverages. MLCC §701(4)

[2]The Liquor Control Commission cannot suspended or revoke a license or take other action against a licensee in situations where the State/local police, when enforcing the law prohibiting a licensee from selling alcoholic beverages to persons under 21 years old, have not charged the minors involved in the offense (except minors being used as undercover agents) with violating the law prohibiting these persons from purchasing or attempting to purchase such beverages. MLCC §905(1)

[3]Does not apply to a State chartered vehicle.

STATE:	**MINNESOTA**
General Reference:	Minnesota Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense;	Under the influence of alcohol §169.121, subd. 1(a)
Illegal Per Se Law (BAC/BrAC):	**≥0.10 but <0.20**[1&2] §169.121, subd. 1(e) **≥0.20**[1&2] §169.121, subd. 1(f) **Any Amount of a Controlled Sustance in the Body**[3] §169.121, subd. 1(h)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **A Controlled Substance**, (2) A Listed Hazardous Substance or (3) a Combination of Alcohol, a Controlled Substance or a Listed Hazardous Substance §169.121, subd. 1(b), (c) & (g)
Other:	For Persons Under 21 Years Old, see p. 3-254. For Comm. Motor Vehicle and School Bus Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** Note: Also applies to CMV operators. §169.121, subd. 6
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[4]
Applied Consent Law Applies to Drugs (Yes/No):	**Yes** controlled[3] or hazardous substances §169.123, subd. 2(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** §169.121, subd 2, & *McConnell v. Com'r of Public Safety,* 473 N.W.2d 848 (Minn. 1988)

[1]This State's illegal per se provisions also make it an offense to operate a motor vehicle with either a breath or a urine alcohol concentrations at or above these levels.
[2]Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §169.01, subd. 61
[3]Applies to controlled substances listed in Schedules I & II except marijuana or tetrahydrocannabinols. §169.121, subd 1(h) It is an affirmative defense to a violation of this provision if the defendant can show that the controlled substance was being used according to the terms of a valid prescription. §§169.121, subd. 2(e), 169.123, subds 2(b) & 4 and 609.21
[4]**Special Note:** A test can be requested if one of the following exists: (1) A person has been lawfully placed under arrest under §169.121; (2) a person has refused to take preliminary screening test; (3) a person refused to submit to a PBT or they submitted to such a test and the result indicated a BrAC ≥0.10; or, (4) a person is involved in an accident resulting in property damage, personal injury, or death. §169.123, subd. 2

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (See Footnote No. 2 above.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for the presence of alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for not less than 10 yrs (10 yrs mand). A CMV operator is placed "out-of-service" for 24 hrs if they have any alcohol in their system. It is a misdemeanor to operate a CMV with a BAC/BrAC/UrAC ≥0.04 but <0.20; the sanctions for this offense are jail for not more than 90 days and/or a fine of not more than $700. It is a gross misdemeanor to operate a CMV with either a BAC/BrAC/UrAC ≥0.20 or with a BAC/BrAC/UrAC ≥0.04 but <0.20 w/n 5 yrs of a prior drunk driving offense or license revocation; the sanctions for this offense are jail for not more than 1 yr and/or a fine of not more than $3,000. §§169.01, subds. 50, 61 & 75; 169.1211, subd. 1; 169.1215; 169.123, subds. 2 & 4; 171.01, subd. 22; 171.165, subds. 1, 2, 3(1) & 3(2); and, 609.03

School Bus Operators. It is misd to operate a school bus with any alcohol in the body-Jail for not more than 90 days and/or a fine of not more than $700 The offense is a gross misdemeanor if it occurred w/n 5 yrs of a prior drunk driving offense or license revocation; the sanctions for this offense are jail for not more than 1 yr and/or a fine of not more than $3,000. §§169.1211 & 609.03

Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information:	Under §169.123, sub. 4, a driver may be required to submit to a chemical test if there is probable cause to believe that they have injured another person while violating §169.121.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §169.123, subd. 2
Urine:	**Yes** §169.123, subd. 2[1] May be requested for the presence of either a controlled or hazardous substance. §169.123, subd. 2a
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes**[1] §§169.124, 169.126 (alcohol assessment required), 260.015, subd 2 (chemical use assessment for persons < 18 yrs old), & 260.193, subd. 8(i) **Conditional Release.** I. Unless maximim bail is imposed, a person charged with a drunk driving or impled consent offense, where the offender either (1) has had 2 prior offense convictions w/n 5 yrs or 3 or more such convictions w/n 10 yrs, (2) was <19 yrs old and this is their 2nd or subsequent charge for either a drunk driving offense or implied consent law violation, (3) has been charge with driving with an alcohol concentration ≥0.20 or (4) can be released from detention only if they agree to abstain form alcohol use and (2) to submit to daily monitoring of their alcohol level. §169.121, subd 1c(a) II. Unless maximum bail is imposed, a person charged with a drunk driving or impled consent offense, where the offender either (1) had three prior offense convictions w/n 10 yrs or (2) 4 such prior convictions w/n their lifetime, can only be released under the following conditions: (1) The impoundment of the registration plates of the vehicle used in offense; (2) the person must report weekly to a probation officer; (3) the person must abstain from the use of alcohol or controlled substances; and, (4) the person must submit to weekly random testing for alcohol. §169.121, subd 1c(b)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**

[1]**Special Note:** If a person has had two or more implied consent tests showing an alcohol concentration ≥0.07, the licensing agency may require them to submit to alcohol/drug assessment with appropriate treatment. If a person refuses to undergo assessment/treatment, their lic. may be denied for not more than 90 dys. §169.121, subd. 8

Sanctions for Refusal to Submit to a Chemical Test: (continued)

Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	See Vehicle Impoundment/Confiscation on pp. 3-257 & 3-258.
Criminal Sanction (Fine/Jail):	1st Refusal-misd: Jail-Not more than **90 dys**; fine-Not more than **$700** Refusal where there has been either a previous drunk driving offense or license revocation w/n 5 yrs-gross misd: Jail-Not more than **1 yr**[1]; fine-Not more than **$3,000**. Refusal where there has been 2 or more previous drunk driving offenses or license revocations w/n 10 yrs-enhanced gross misd: Jail-Not more than **2 yrs**[1]; fine-Not more than **$3,000**.. §§169.121, subds. 1a, 3 & 3(b) & (c) and 609.03(2) & (3)
Administrative Licensing Action (Susp/Rev):	**Revocation via a Conviction.** 1st off-Rev-Not less than **90 dys** (15 dys mand[2] For persons < 18 yrs old-90 dys mand); 2nd off (w/n 5 yrs or 3rd or sub off on the record)-Rev-Not less than **1 yr** (180 dys mand[2] For persons < 18 yrs old-360 dys mand[2]) and treatment (rehabilitation) must be successfully completed under §169.126 before the license is reinstated; 3rd off (w/n 5 yrs)-Rev-Not less than **1 yr** (180 dys mand[2] For persons < 18 yrs old-360 dys mand); 4th and sub. off (on the record)-Rev-Not less than **2 yrs** (180 dys mand[2] For persons < 18 yrs old-360 dys mand[2]) If the offender is under 21 years old, rev either for 6 mos or for the rev periods above whichever is the greater rev period. §§169.121, subd. 4, and 171.30, subds. 2a & 2b **Admin. Revocations.** 1st Refusal-Rev **1 yr** (15 dys mand[2] For persons < 18 yrs old-90 dys mand) (Note: Except for persons under 21 years old and provided the person does not have a prior offense w/n 10 yrs, persons, who are convicted of the above implied consent offenses, are subject to the licensing actions associated with the conviction.) §169.121, subd. 4(e). Sub. Refusal-Rev-**1 yr** (180 dys mand[2] For persons < 18 yrs old-360 dys mand) Note: A person is subject to rev. even if a test is taken via "force". §169.123, subd. 4
Other:	I. For a 2nd off w/n 5 yrs or 2 or more offs w/n 10 yrs, a person may be ordered by the court to participate in a chemical use dependency treatment program. §169.121, subd. 3b II. Under §169.121,. sub. 4(e), in **DWI Child Endangerment** situations where the driver has been convicted of a drunk driving offense and has also refused to submit to a chemical test, the mand licensing sanctions for refusal apply.

[1]**Mandatory Sanctions.** For mandatory sanctioning purposes, a conviction for a refusal to submit to a chemical test is treated the same way as driving while under the influence of alcohol. §169.121, subds. 3d & 3e See Mandatory Minimum Term and Fine sanctions for drunk driving offenses on p. 3-255.

[2]A limited license may be issued after this mandatory revocation (or "waiting") period. §171.30, subds. 2a & 2b However, see Footnote No. 5 on p. 3-256.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Double Jeopardy on p. 3-256 and the Special Note below.
Important: See Alcohol Treatment on p. 3-257.
Misdemeanor: Driving while under the influence of alcohol/controlled substance or with an alcohol concentration ≥0.10 but <0.20 §169.121, subd. 3(c)
Gross Misdemeanor: Either (1) driving while under the influence of alcohol/controlled substance or with an alcohol concentration ≥0.10 but <0.20 w/n 5 yrs of a prior offense[1], (2) driving with an alcohol concentraion ≥0.20, (3) **DWI Child Endangerment**[2], or (4) Illegally Crossing a Railroad Track While violating the drunk driving laws-§§169.121, subd. 3(c) & 609.03
Enhanced Gross Misdemenaor: If w/n 10 yrs of any prior drunk driving offense[1]: Two or more convictions for either (1) driving while under the influence of alcohol/controlled substance or with an alcohol concentration ≥0.10 but <0.20, (2) driving with an alcohol concentration ≥0.20, (3) **DWI Child Endangerment**[2], or (4) Illegally Crossing a Railroad Track While violating the drunk driving laws-§§169.121, subd. 3(d) & 609.02

[1]A prior offense also includes convictions for either an implied consent law violation, DWI related injury or DWI related vehicle homicide. §169.121, subd. 3(a)
[2]Where a child under 16 years old was riding with a drunk driving law offender who was at least 36 months older than the child. §169.121, subd. 3(c)(4)
Persons Under 21 Years Old. It is a misdemeanor for these persons to "operate a motor vehicle while consuming alcoholic beverages, or after having consumed alcoholic beverages while there is physical evidence of the consumption present in the person's body." The sanctions for this offense are jail for not more than 90 dys, a fine of not more than $700 and license suspension. For a 1st off, lic. susp. for 30 dys and, for a sub. off, lic. susp. for 180 dys. These suspensions appear to be mandatory. §§169.1218 & 609.03
Special Note: I. In situations where a person has caused a "bodily harm" while operating a motor vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥0.10, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.), the following sanctions apply: Jail-not more than 1 yr; fine-not more than $3,000; and, 1 yr mand lic revocation. For persons <18 yrs old, a mandatory lic rev for 2 yrs. See Footnote No. 2 on p. 3-259. §§609.21, subd. 2b and 171.30, subd. 2a(4) & 2b
II. In situations where a person has caused a "great bodily injury" while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥0.10, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.), the following sanctions apply: Jail-not more than 5 yrs; fine-not more than $10,000; and, 1 yr mand lic revocation. For persons <18 yrs old, a mandatory lic rev for 2 yrs. See Footnote No. 2 on p. 3-259. §§609.21, subd. 2 and 171.30, subd. 2a(4) & 2b
III. In situations where the driver has caused a "substantial bodily injury" while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥0.10, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.), the following sanctions apply: Jail-not more than 3 yrs; fine-not more than $10,000; and, 1 yr mand lic revocation. For persons <18 yrs old, a mandatory lic rev for 2 yrs. See Footnote No. 2 on p. 3-259. §§609.21, subd. 2a and 171.30, subd. 2a(4) & 2b
IV. In situations where the driver has caused an "injury to an unborn child" while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥0.10, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.), the following sanctions apply: Jail-not more than 5 yrs; fine-not more than $10,000; and, 1 yr mand lic revocation. For persons <18 yrs old, a mandatory lic rev for 2 yrs. See Footnote No. 2 on p. 3-259. §§609.21, subd. 4 and 171.30, subd. 2a(4) & 2b

Sanctions Following a Conviction for a DWI Offense:
(continued)

Imprisonment: Term (Day, Month, Years, Etc.):	Misdemeanor-Up to **90 dys** Gross Misdemeanor-Not more than **1 yr** §§169.121, subd. 3(c) & 609.03 Enhanced Gross Misdemenaor-Not more than **2 yrs** §§169.121, subd. 3(d) & 609.02
Mandatory Minimum Term:	Misdemeanor-**None** Gross Misdemeanor-**30 dys** (48 hrs must be served consecutively)[1] §169.121, subd. 3d Enhanced Gross Misdemeanor-I. **90 dys** (30 days consecutive) (not more than 60 dys may be served on "home detention" or on intensive probation)[2] where the person has been convicted of (1) illegal per se ≥0.20, **DWI Child Endangerment** or Illegally Crossing a Railroad Track While violating the drunk driving laws and has one prior drunk driving offense w/n 10 yrs or (2) any other drunk driving offense and has two prior drunk driving offs w/n 10 yrs. II. **180 dys** (30 days consecutive) (not more than 150 dys may be served on "home detention" or on intensive probation)[2] where the person has been convicted of (1) illegal per se ≥0.20, **DWI Child Endangerment** or Illegally Crossing a Railroad Track While violating the drunk driving laws and has two prior drunk driving offenses w/n 10 yrs or (2) any other drunk driving offense and has three prior drunk driving offs w/n 10 yrs. III. **1 yr** (60 days consecutive) (the remainder of the term may be served either on intensive probation or on "home detention")[2] where the person has been convicted of (1) illegal per se ≥0.20, **DWI Child Endangerment** or Illegally Crossing a Railroad Track While violating the drunk driving laws and has a three/four or more prior drunk driving offense w/n 15 yrs/lifetime respectively or (2) any other drunk driving offense and has four/five or more drunk driving offs w/n 15 yrs/lifetime respectively. §169.121, subd. 3e
Fine: Amount ($ Range):	Misdemeanor-Not more than **$700** §§169.121, subd. 3(c) & 609.03 Gross Misdemeanor-Not more than **$3,000** §§169.121, subd. 3(c) & 609.03 Enhanced Gross Misdemenaor-Not more than **$3,000** §§169.121, subd. 3(d) & 609.02
Mandatory Min. Fine ($):	Misd Offs-**$140**; Gross Misd Offs-**$600** Note: The law provides, that unless undue hardship would result, the court must impose on misdemeanor or gross misdemeanor offenders a fine of at least 20% of the maximum fine allowed by law. This minimum fine is in addition to any other assessments or surcharges under §609.101, subd. 1. §609.101, subd. 4

[1]Based on mitigating circumstances, the court may sentence a person without regard to the mandatory sanctions. However, any sanction that is imposed must include either 48 hrs of consecutive incarceration or 80 hrs of community service. §169.121, subd. 3d

[2]As an alternative, a defendant may be sentenced to a program of intensive supervision per §169.1265 (see Miscellaneous Sanctions on p. 3-258) w/ at least 6 dys of incarceration in a local correctional facility. §169.121, subd. 3e

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:	
Community Service:	Gross Misdemeanor-If lieu of the 30 dys mand imprisonment, a person may be sentenced to serve 8 hrs of community service for each day not served in jail. §169.121, subd. 3d See Footnote No. 1 on p. 3-255.
Restitution (eg Victim's Fund)	**Yes** Victim's Fund (§§611A.01 et seq.)[1] and also direct payment by the defendant to a victim (§§609.10 & 609.125(4))
Other:	See Footnote Nos. 2 & 3.
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy and the Special Note below.
Administrative Per Se Law:	**Yes** ≥**0.10** (BAC/BrAC/UrAC See Footnote No. 2 on p. 3-251) or **Any Amount of a Controlled Sustance in the Body** (See Footnote No. 3 on p. 3-251.) 1st Violation-**Rev-90 dys**[4,5&6] (15 dys mand[6] For persons < 18 yrs old-90 dys mand[6]); 2nd or Sub. Violation (w/n 5 yrs)-**Rev-180 dys**[4&6] (90 dys mand[6] For persons < 18 yrs old-180 dys mand[6]) A limited license is available after the min. mandatory rev (or "waiting") period. §§169.123, subd 4, and 171.30, subd. 2a & 2b
Other:	Under §171.18, a person's license may be susp for not more than 1 yr if they have "committed" an off that requires mandatory license rev (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.
Post DWI Conviction Licensing Action:	See Persons Under 21 Years Old on p. 3-254.
Type of Licensing Action (Susp/Rev):	All offs-**Rev** §§169.121, subd. 4, and 171.17

[1]Payments to all claimants shall not exceed $50,000 per victim. §611A.54

[2]**Assessments & Surcharges.** If no fine is imposed, an assessment of at least $25 but not more than $50. If a fine is imposed, a surcharge of 20% of the fine. In addition, the following surcharges must be paid: Felony-$25; gross misd-$15. § 609.101, subd. 1(a) and (b)(1) & (2) For alcohol screening, there is a surcharge of $125 ($130 if there has been a prior offense w/n 5 yrs). §169.121, subd. 5a Likewise, in addition to any other fine or assessment, a person, who has been convicted of driving with an alcohol concentration ≥0.20 under §169.121, subd 1(f), may be required to pay an assessment of up to **$1,000**. §169.121, subd. 5b

[3]**Assessments for Police Officer Training.** An assessment of 15% of the fine is imposed for the purpose of funding the Police Officers Training Account. However, if the court does not impose a fine sanction, it must, nevertheless, impose an assessment ≥$5 but ≤$10 for a petty misdemeanor or ≥$25 but ≤$50 for either a misdemeanor, gross misdemeanor or felony. §626.861, subd. 1

[4]For persons less than 21 years old, the rev period is six (6) mos (12 mos if alcohol concentration ≥0.20). §169.123, subd. 4

[5]The admin. per se revocations do not apply if a person has been convicted of a 1st DWI off related to the same incident. §169.121, subd. 4(f)

[6]**Special Note:** If the persons's alcohol concentration was ≥0.20, the license revocation periods are **double** the ones given. §§169.123, subd. 4(e)(4) & 171.30, subd. 2c

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Hanson,* 543 N.W.2d 84 (Minn. 1996)

Special Note: The administrative per se law does not violate a person's constitutional right to due process of law. *Heddan v. Dirkswager,* 336 N.W.2d 54 (Minn. 1983)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.):	1st off-Not less than **30 dys**[1]; 2nd off (w/n 5 yrs)-Not less than **180 dys**[1]; 3rd off (w/n 5 yrs)-Not less than **1 yr**[1]; 4th and subsequent offs-Not less than **2 yrs**[1] See Footnote No. 2. For persons under 21 yrs old, see Footnote No. 3.
Mandatory Minimum Term of Withdrawal:	1st and sub. off-**15 dys**[1&4] §171.30, subd. 2a For persons <18 yrs old-90 dys[1] §171.30, subd. 2b
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** §§169.124 & 169.126
Alcohol Treatment:	**Yes** §§169.121(5), 169.124 & 169.126 **Special Note:** The court may stay imposition of fine or jail sentence but not license rev if defendant submits to treatment at an authorized dependency facility, as provided by §§169.121, subd. 5, and 609.135, subds. 1 & 2.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Administrative Impoundment via Commissioner of Motor Vehicles.** The registration plates of a vehicle **must** be impounded[5,6&7] (1) if the vehicle operator w/n 5 yrs has been convicted of or had a license revocation either for driving while under the influence of alcohol or a controlled substance or with an alcohol concentration ≥0.10 but <0.20 or for an implied consent law violation, (2) if such convictions or revocations are w/n 15 yrs of prior ones and are based on separate incidents (3) if the vehicle operator was driving with an alcohol concentration ≥0.20 or (4) if the vehicle operator has been convicted of any

[1]**Special Note:** A person, who has been convicted of driving with an alcohol concentration ≥0.20 under §169.121, subd 1(f), must have their driving privileges **revoked for double** these periods. §§169.121, subd. 4(e) & 171.30, subd. 2c
[2]Note: Ninety (90) additional dys are added to the above rev base periods if the drunk driving offense involved either a death or an injury. §169.121, subd. 4(d)
[3]If the drunk driving law offender is under 21 yrs old, their license is revoked for 6 mos or for the normal period of time for drunk driving law violators whichever is the greater period. §169.121, subd. 4(b)
[4]Under §171.30, after the min. mandatory rev (or "waiting") period, a limited license may be issued (1) for employment purposes, (2) for attendance at an alcohol treatment program or (3) for the needs of a homemaker in order to prevent the substantial disruption of the educational, medical or nutritional needs of the family.
[5]Vehicle impoundment does not apply either to rental vehicles or to vehicles registered in other States. §168.042, subd. 2
[6]If the registered owner of a vehicle was not a passenger at the time of the offense, they may have the vehicle registration plates reissued. §169.042, subd. 8
[7]**Special Plates.** Special plates may be issued so that the vehicle may be operated by either a family member, who has a valid driver's license, or by the offender if they have a limited (restricted) license. §168.042, subd 12 A law enforcement officer is authorized to stop a vehicle bearing these plates in order to determine if the driver is lawfully authorized to operate a motor vehicle. §168.0422 However, a recent court decision held that a vehicle cannot be stopped simply because it bears these "special plates". Such suspicionless stops are unconstitutional. *State v. Grayeagle,* 541 N.W.2d 326 (Minn.App. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Impoundment via Commissioner of Motor Vehicles. (continued) drunk driving or implied consent offense while transporting a child under 16 yrs old where the driver was at least 36 monthsolder then the child. New registration plates are issued when the driver's license revocation order is "rescinded". §168.042

Forfeiture (Administrative or Juridical).[2&3] Via §169.1217, any motor vehicle used in the following offenses or violations is subject to forfeiture.

I. An admin. per se revocation w/n 5 yrs of either 2 prior license revocations, 2 prior drunk driving offense convictions or a combination thereof based on 2 separate incidents.

II. An admin. per se revocation w/n 15 yrs of either 3 or more prior license revocations, 3 or more prior drunk driving offense convictions or a combination thereof based on 3 or more separate incidents.

III. Excepted as noted in IV and V, a drunk driving or implied consent refusal offense w/n 5 yrs of either 2 prior drunk driving offenses, 2 prior license revocations or a combination thereof based on 2 separate incidents.

IV. Excepted as noted in IV and V, a drunk driving or implied consent refusal offense w/n 15 yrs of either 3 or more prior drunk driving offenses, 3 or more prior license revocations or a combination thereof based on 3 or more separate incidents.

V. Driving with an alcohol concentration ≥0.20 in violation of §169.121, subd. 1(f) or **DWI Child Endangerment** w/n 5 yrs of either a prior drunk driving offense or prior license revocation.

VI. Driving with an alcohol concentration ≥0.20 in violation of §169.121, subd. 1(f) or **DWI Child Endangerment** w/n 15 yrs of either a 2 or more prior drunk driving offenses or 2 or more prior license revocations.

Terms Upon Which Vehicle Will Be Released:

See Impoundment above.

Other:

Special Note: A vehicle may be impounded following a DWI arrest. The vehicle may be released to the vehicle owner (or lien holder) upon proof of a valid driver's license and insurance. 169.1216

Miscellaneous Sanctions Not Included Elsewhere:

Intensive Probation (Pilot Program). Counties may receive State grants to start "intensive probation" programs for repeat drunk driving law offenders.[3] §169.1265

[1]Based upon the same factual situation, a person, who has been convicted of a certain drunk driving or license revocation offenses, is also subject to having their vehicle forfeited via a civil proceeding. Such subsequent civil proceeding does not violate the constitutional prohibition against double jeopardy. *City of New Hope v. 1986 Mazda 626,* 546 N.W.2d 300 (Minn.App. 1996)

[2]Forfeiture is mandatory. *Adkins v. 1979 Midas R.V.,* 546 N.W.2d 768 (Minn.App. 1996)

[3]These program must provide, in part, for (1) chemical dependency assessment, (2) a period of incarceration (or detention), (3) home detention, (4) abstinence from the use of alcohol/drugs, (5) decreased levels of program contact over the period of probation and (6) the costs of the program to be paid in whole or in part by the defendant. §169.1265

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Felony I. Death as a result of operating a motor vehicle either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥0.10, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.) §609.21, subd. 1 II. "Death to an unborn child" while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥0.10, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.) §609.21, subd. 3
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **10 yrs** §609.21, subds. 1 & 3
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$20,000** §609.21, subds. 1 & 3
Mandatory Minimum Fine:	**None** See Footnote Nos. 2 & 3 on p. 3-256.
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §§169.11[1] & 171.17
Length of Term of Licensing Withdrawal:	See Footnote No. 2.
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr** (For persons <18 yrs old, 2 yrs) §171.30 Note: A limited license may be issued after the 1 (or 2) yr minimum license rev period. §171.30, subd. 2a & 2b
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	On p. 3-260, see Footnote No. 1 and the Special Note.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd** Not more than **90 dys** §§171.24[3] & 609.03(3)

[1]A defendant may also be required to surrender their vehicle's registration plates during the period of license revocation. §168.041, subds. 1, 3 & 4

[2]**Injury or Death Related DWI Offenses.** The maximum rev. length for these offenses is not specified by statute. However, the following provisions are applicable. (1) An offender cannot have their driving privileges restored until they have completed an examination by the licensing agency. §171.29, subd. 1 And, (2) if a court has denied an offender's petition for reinstatement of their license, the offender must wait 1 yr before they can petition the court again for such reinstatement. §171.19

[3]A violation of §171.24 shall result in a person having their motor veh registration plates impounded under §168.041, subds. 3 & 4.

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$700** 609.03(3)
Mandatory Minimum Fine:	**None** See Footnote Nos. 2 & 3 on p. 3-256.
Administrative Licensing Actions:	See the Special Note and Vehicle Forfeiture below.
Type of Licensing Action (Susp/Rev):	**Susp** Appies only to 2nd or sub. offs. §168.041, subd. 2
Length of Term of License Withdrawal Action:	2nd or sub. off-Not more than **1 yr** §168.041, subd. 2
Mandatory Term of License Withdrawal Action:	**None**

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

[1]It is an aggravated violation for a person to commit a drunk driving offense while their license is still suspended or revoked for a previous alcohol related driving offense, implied consent law refusal, an admin. per se law violation or vehicle homicide offense. A violation is a gross misdemeanor with the following sanctions: Imprisonment for not more than 1 yr and/or a fine of not more than $3,000. However, a person, who violates this provision and who has been revoked two or more times for any of the above listed offenses w/n 10 yrs, is guilty of an enhanced gross misdemeanor with the following sanctions: Imprisonment for not more than 2 yrs and/or a fine of not more than $3,000. §§169.129, 609.02 & 609.03(2) This sentence must be consecutive to one imposed for a drunk driving offense. §169.121, subd. 3(e)

Special Note: A person commits a misd if they operate a CMV during a CDL disqualification. The sanctions for this offense are imprisonment for not more than 90 dys and/or a fine of not more than $700. §§171.24, subd. 4 & 609.03

Vehicle Forfeiture. A person's vehicle is subject to mandatory forfeiture, if they commit either a drunk driving or aggravated drunk driving offense after their driving privileges have been canceled the licensing agency on the grounds that their "operation of a motor vehicle on the highways ... would be inimical to public safety or welfare." §§169.1217, subd. 1(b)(3); 171.04, subd. 1(9); and, *Adkins v. 1979 Midas R.V.*, 546 N.W.2d 768 (Minn.App. 1996)

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §169.09, subd. 11
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** age 16 or older
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[1] (Year Eff: 1986) §340A.503, subd. 2(1) & (2)
Minimum Age (Years) Possession:	**21** There is an exemption for the possession of alcoholic beverages in the home. §340A.503, subd. 3
Minimum Age (Years) Consumption:	**21** There is an exemption for the consumption of alcoholic beverages with the consent of a parent in the home. §340A.503, subd. 1(2)
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes**[2] §340A.801
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	
Dram Shop Actions-Social Hosts:	**Yes-Limited** Via principles of common law negligence, a social host, who is ≥21 yrs old, may be held liable for the injuries caused by or to a guest, who is <21 yrs old. §340A.801, subd. 6 & *Vanwagner v. Mattison,* 533 S.W.2d 75 (Minn.App. 1995)
Other:	A patron cannot bring a cause of action against a licensee for injuries they have sustained as a result of becoming intoxicated at the licensee's establishment. *Line Const. Ben. Fund (Lineco) v. Skeates,* 563 N.W.2d 757 (Minn.App. 1997), & *Empire Fire & Marine Insurance Co. v. Williams,* 121 N.W.2d 580 (Minn. 1963)

[1]A person under 21 yrs old may purchase alcoholic beverages if they are under the supervision of a person over 21 yrs old and the purpose of the purchase is for training, education or research purposes. The law further provides that "[p]rior notification of the licensing authority is required unless the supervised alcohol purchase attempt is for professional research conducted by post-secondary educational institutions or state, county, or local health departments." §340A.503, subd. 2

[2]A licensee who has a license to sell alcoholic beverages only on the premises may still be liable for the actions of patrons who procure such beverages from the license but consume them off the premises. *Englund, v. MN CA Partners,* 555 N.W.2d 328 (Minn.App. 1996) In addition, a licensee may be liable under the Dram Shop Act for damages caused by a driver, who consumed alcoholic beverages at the licensee's establishment, to vehicle passengers, who were injured in an automobile accident while riding with the intoxicated patron. *Lefto v.Hoggsbreath Enterprises, Inc.,* 567 N.W.2d 746 (Minn.App. 1997) (Review of this decision has been granted by the Minnesota Supreme Court, 1997 Minn. LEXIS 825.)

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Gross Misd** §§340A.502, 340A.702(7) & 609.03
Term of Imprisonment:	Up to **1 yr**
Fine ($ Range):	Not more than **$3,000** (An admin. fine of up to **$2,000** may also be impossed. §340A.415) See Footnote Nos. 2 &3 on p. 3-253.
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** §340A.415
Length of Term of License Withdrawal:	Suspended for up to **60 days** or revoked for an unspecified period of time.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Gross Misd** §§340A.503, subd. 2(1), & 340A.702(8) & 609.03
Term of Imprisonment:	Up to **1 yr**[1]
Fine ($ Range):	Not more than **$3,000** (An admin. fine of up to **$2,000** may also be imposed. §340A.415)[1] See Footnote Nos. 2 & 3 on p. 3-256.
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** §340A.415
Length of Term License Withdrawal:	Suspended for up to **60** days or revoked for an unspecified period of time.
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §169.122(2) & (3)
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §169.122(1)

[1]In *State v. Guminga,* 395 N.W.2d 344 (Minn. 1986), the Minnesota Supreme Court held that criminal sanctions cannot be imposed on employers for the illegal actions of their employees who sell/serve alcoholic beverages to persons under the legal drinking age. Note: See §340A.501 which also eliminates the possibility of such vicarious criminal liability.

STATE:	**MISSISSIPPI**
General Reference:	Mississippi Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §63-11-30(1)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1&2] §63-11-30(1) Persons Under 21 Years Old-≥**0.02**[1&2] §63-11-30(1)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Substance** or (2) Any Drug or Controlled Substance the possession of which is illegal §63-11-30(1)
Other:	For Commercial Motor Vehicle Operators, see p. 3-264.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §63-11-5
Implied Consent Law:	
Arrest Required (Yes/No):	**No** However, a request to submit to a test is based on reasonable grounds and probable cause of DWI. §63-11-5(1)
Implied Consent Law Applies to Drugs (Yes/No):	**No** §63-11-5
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases)[3] §63-11-41
Other Information:	I. A driver, who is involved in traffic accident resulting in a fatality, cannot refuse to submit to a blood test for alcohol or drug content. §63-11-8 II. If a driver has been legally arrested for an offense where BAC evidence is relevant, a blood sample may be obtained in order to determine such BAC without the consent of the driver. *Gregg v. State,* 374 So.2d 1301 (Miss. 1979)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §63-11-5
Urine:	**Yes** §63-11-5
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Yes** A DWI charge cannot be reduced §63-11-39
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Limited §63-11-30(2)(d)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath or alcohol concentration of 0.10 (0.02 for persons <21 yrs old) or more.
[2]Standard: Alcohol concentration is expressed as "percent" which is defined as milligrams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§63-11-3(e), 63-11-23(2) & 63-11-30(1)
[3]Refusal to submit a chemical test cannot be admitted into evidence in a civil action. §63-1-43

Sanctions for Refusal to Submit to a Chemical Test

Refusal to Take Implied Consent Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**Susp** for **90 dys** (mand) if there has been no previous conviction for a DWI off (§63-11-30). **Susp** for **1 yr** (mand) if there has been a previous conviction for a DWI off (§63-11-30) §§63-11-5 & 63-11-23
Other:	**Special Note:** A *de novo* court trial may be held following administrative hearings on these susps. §63-11-25

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	**Important.** See Double Jeopardy and the Special Note below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	DWI off-Misd (3rd and sub. off-Felony) 1st Off-Not more than **48 hrs**[1] (See Victim Impact Panel on p. 3-265.); 2nd Off (w/n 5 yrs)-**10 dys**[1&2]**-1 yr**; 3rd & Sub. Off (w/n 5 yrs)-**1 to 5 yrs**[1] (State Penitentiary) Conviction for a DWI off where there has been negligence resulting in disfigurement, disability, etc., (felony)-Not more than **25 yrs** §63-11-30(2)(a), (b) & (c) and (5)
Mandatory Minimum Term:	**No**[1]

[1]The DWI law does not specifically prohibit suspending or placing persons on probation for the minimum imprisonment term. Also, §99-19-25 allows a court to suspended sentences for misdemeanor offenses. Furthermore, under §47-7-33, persons convicted of a first felony offense may be placed on probation and have their sentence suspended.
[2]See Community Service on p. 3-265.
Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Keyes v. State,* 708 So.2d 540 (Miss. 1998)
Special Note: For persons <21 yrs old, the sanctions for a normal drunk driving offenses apply if their BAC/BrAC ≥0.08. However, different sanctions apply if their BAC/BrAC is ≥0.02 but <0.08; see **Persons Under 21 Years Old** on p. 3-265. §63-11-30(3)(a)
DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is "suspended" for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical (breath) test for alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "suspension" is for life (or a lesser period as established by Federal law). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service' for 24 hours. A person commits a drunk driving offense if they operate a CMV with a BAC/BrAC ≥0.04. §§63-1-75(b), 63-1-82(3), 63-1-83, 63-1-84 & 63-11-30(1)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:	
Amount ($ Range):	1st Off-**$250 to $1,000**; 2nd Off (w/n 5 yrs)-**$600 to $1,500**; 3rd & Sub. Off (w/n 5 yrs)-**$2,000 to $5,000** Conviction for a DWI off where there has been negligence resulting in disfigurement, disability, etc. (felony) - Not more than **$10,000** §§47-5-3, §63-11-30(2)(a), (b) & (c) & (5) and 99-19-32
Mandatory Min. Fine ($):	1st off-**$250**; 2nd off (w/n 5 yrs)-**$600**; 3rd & sub. off (w/n 5 yrs)-**$2,000** §99-19-25
Other Penalties:	
Community Service:	**Yes** 2nd off-Community service from 10 dys to 1 yr in addition to imprisonment. §63-11-30(2)(b)
Restitution (eg Victim's Fund)	**Yes**[1] I. A defendant may be ordered by the court to make direct restitution to a victim. §99-39-1 et seq. II. A victim may also obtain limited compensation from the State Crimes Victims' Compensation Fund. §99-41-5 et seq.
Other:	
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-264.
Administrative Per Se Law:	**Yes** This law encourages DWI offenders, who have a BAC/BrAC ≥**0.10** (for persons <21 yrs old-≥**0.02**) (See Footnote No. 2 on p. 3-263.), to request a trial w/n 30 dys after arrest. If the chemical test indicates one of the above BAC/BrAC levels, the driver's license is seized by the police and sent the licensing agency. The driver is issued a receipt for such license. This receipt may be used as a temporary permit for 30 dys. If a trial is requested w/n 30 dys after arrest but cannot be held, a person is allowed to drive for not more than 90 dys after arrest. **Important:** If temporary driving privileges expire without a trial, the license susp periods for implied consent violations apply. §63-11-23(2)
Other:	A person's license may be susp if they have "committed" an off that usually requires license rev (e.g., vehicle homicide)[2]. Such action may be taken without a preliminary hearing. The time period for this susp is not specified. §63-1-53(1)(a) **Comment:** Such action could occur prior to a conviction.

[1]Some victims of criminal activity may receive compensation from a special crime victims' escrow account. Funds for this account are provided via monies received by accused or convicted persons from the news, publicity or entertainment media for the purpose of reenacting the criminal event. A victim, however, must first have a money judgment against a defendant for the injury caused by a criminal action before they can receive funds from the escrow account. §99-38-1 et seq.
[2]Note: A DWI offense results in license suspension not revocation.
Persons Under 21 Years Old. The following sanctions apply to persons, who are <21 yrs old and who drive with a BAC/BrAC ≥0.02 but <0.08. 1st offense-A fine of **$250**, license susp-**90 dys** (30 dys mand A hardship lic may be issued after the 30 dy period for purposes of either employment, education or medical needs.), and complete an alcohol education program; 2nd offense (w/n 5 yrs)-A fine of not more than **$500** and license susp-**1 yr** (6 mos mand); and, 3rd or sub offense (w/n 5 yrs)-A fine of not more than **$1,000** and license susp until they reach 21 or for **2 yrs** whichever is the longer susp period (6 mos mand). For either a 2nd or sub offense, driving privileges may be reinstated after 6 mos if the person receives a "diagnostic assessment" and completes any needed alcohol treatment program. §63-11-30(3)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:	Important. See Persons Under 21 Years Old on p. 3-265.
Type of Licensing Action (Susp/Rev):	**Susp All offs** §63-11-30
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**90 dys to 1 yr**[1&2]; 2nd off (w/n 5 yrs)-**2 yrs**[1]; 3rd or sub. off (w/n 5 yrs)-**5 yrs**[1]
Mandatory Minimum Term of Withdrawal:	1st off-**30 dys**[3]; 2nd off (w/n 5 yrs)-**1 yr**[4]; 3rd & sub. off (w/n 5 yrs)-**3 yrs**[5] See Footnote No. 6.
	Special Note: I. Notwithstanding §63-11-30, a person, who has been convicted of operating a motor vehicle while under the influence of a controlled substance, must have their driving privileges forfeited for not less than 6 mos. §63-1-71(1) II. If a person is convicted of a DWI offense where there has been a chemical test refusal, the licensing sanctions for the DWI conviction are in addition to those imposed under the implied consent law. §63-11-30(4)
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** 1st off - Required before license can be reinstated. §§63-11-30(2)(a) & 63-11-32
Alcohol Treatment:	**Yes** 2nd and 3rd offs §63-11-30(2)(e) & (f)
Alcohol Education/ Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	**Forfeiture.** For a 3rd or sub. offense (w/n 5 yrs), an person's vehicle may be forfeited . However, an offender's spouse may obtain possession of the vehicle if they can demonstrate that the vehicle is their only means of transportation. §§63-11-30(2)(c) & 63-11-49
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**

[1]Judicial review is not allowed for these susp actions by the licensing agency. §63-11-26
[2]The law requires that a 1st offender complete an alcohol education program before they can have their license reinstated. However, in no event can a license suspension exceed 1 yr.
[3]The county circuit court may reduce the suspension period to 30 days provided the defendant demonstrates that they need their license (1) to continue employment or education, (2) to obtain medical care (3) to attend driver improvement, alcohol or drug education programs or (4) to attend court ordered counseling. §63-11-30(2)(a)
[4]For a 2nd conviction, the suspension period may be reduced to 1 yr provided the defendant is (1) diagnosed as needing alcohol/drug abuse treatment and (2) such person successfully completes such treatment. §63-11-30(2)(d)
[5]For a third or subsequent conviction, a defendant's license may be reinstated after three (3) years provided they successfully complete an alcohol/drug abuse treatment program. §63-11-30(2)(e)
[6]The suspensions for DWI convictions are consecutive to those for refusal in those situations where a person has refused to submit to such a test but is, nevertheless, convicted of a DWI offense. §63-11-30(3) & (9)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions Not Included Elsewhere:	I. **Mand. State Assessment: $150** §99-19-73(2) & (7) II. **Victim Impact Panel.** 1st off-Attendance at a victim impact panel in lieu of 48 hrs in jail. §63-11-30(2)(a) III. **Bus Drivers & Operators of Vehicles for Hire.** The privilege to operate a bus/veh. for hire may be susp/rev if a person drives such a vehicle while intoxicated or noticeable under the influence of intoxicating liquor. §§21-27-137 & 21-27-155 IV. **Community Work Center.** Unless the drunk driving offense involved either death or injury, an offender may be assigned to a community work center. §47-5-110(1)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes Felony** Where death is a result of a DWI violation and negligent action by the driver. §63-11-30(4)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **25 yrs** §63-11-30(4)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$10,000** §§47-5-3 & 99-19-32(1)
Mandatory Minimum Fine:	**None**[1]
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §63-1-51(1)(a)
Length of Term of Licensing Withdrawal:	**1 yr** §63-1-51(1)(a)
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr** §63-1-51(1)
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. 2.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd 48 hrs-6 mos** §63-11-40
Mandatory Minimum Term of Imprisonment:	**None** §99-19-25
Fine ($ Range):	**$200 to $500**[1] §63-11-40
Mandatory Minimum Fine:	**$200**[1] §99-19-25
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp**

[1]There is a mand. State assessment of $150. §99-19-73(2) & (7)
[2]It is a misd to operate a CMV during either a CDL disqualification or a CDL out-or-service order. The sanctions for this offense are imprisonment from 1 to 6 yrs, a fine of $5 to $250 and an assessment of $17. §§63-1-69, 63-1-77(2) & (3) and 99-19-73(1)

Other Criminal Actions Related to DWI: (continued)

Length of Term of License Withdrawal Action:	**6-mo susp** added to the original susp period §63-11-40
Mandatory Term of License Withdrawal Action:	**6-mo susp** added to the original susp period §63-11-40
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §63-11-7
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**No**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1986) §§67-1-81, 67-3-53(b) & 67-3-70(1)
Minimum Age (Years) Possession:	**21** There is an employment exemption. §§67-1-81 & 67-3-54
Minimum Age (Years) Consumption:	**None**[1]
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §67-3-73(2) & (4) Note: Licensees are liable only for the actions of minors or "visibly intoxicated" persons.

[1]Note: Persons under 21 years old may consume light wine and beer in the presence of a parent or legal guardian. §67-3-54(1)

Other State Laws Related To Alcohol Use: (continued)

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Munford, Inc. v. Peterson,* 368 So. 2d 213 (Miss. 1979), & *Bryant v. Alpha Entertainment Corp.,* 508 So.2d 1094 (Miss. 1987)[1]
Dram Shop Actions-Social Hosts:	**Yes Limited** A social host cannot be held liable if they provide alcoholic beverages to a person who may lawful consume such beverages. §67-3-73 & *Boutwell v. Sullivan,* 469 So.2d 526 (Miss. 1985)
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** §§67-1-83, 67-3-53(b) & 67-3-69(1) See the Special Note below.
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$500**[2]
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Rev** For Alc. bev. 4% or more alc. by wgt §67-1-83(4); **Rev** For wine and beer not more than 4% alc. by wgt. §67-3-29
Length of Term of License Withdrawal:	(1) For alc. bev. of 4% or more, no period of license susp/rev is specified. (2) For licensees holding light wine & beer (alc. content of not more than 4% alc. by wgt.) permit, their permit may be revoked for 2 yrs for willful neglect or refusal to comply with the alc. bev. control laws. §67-3-29(2) Also, under §67-3-69(1), a permittee, who is convicted of an offense must have their license voided at the time of the conviction. A new license cannot be issued for 1 yr.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: 1st off-**Misd**; 2nd and subsequent offs-**Misd** (2) Selling to a person under 21 yrs old beer and wine not more than 4% alcohol by weight-**Misd** §§67-1-81 & 67-3-53 See the Special Note below.

[1]These cases appear to have been abrogated by §67-3-73.
[2]There is also a mand. State assessment of $47. §99-19-73(5) & (7)
Special Note: Under a separate provision, the law makes it illegal to sell alcoholic beverages of 4% or more except as authorized by law. The sanctions for violating this provisions are as follows: 1st off-1 week to 3 mos in jail and/or a fine of $100 to $500; 2nd off-60 dys to 6 mos in jail and/or a fine of $100 to $5,000; and, 3rd off-1 to 5 yrs in the State Penitentiary and/or a fine of $100 to $5,000 §67-1-9(1) & (2)

Other State Laws Related To Alcohol Use: (continued)

Term of Imprisonment:	(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: 1st off-**None**; 2nd and subsequent offs-Not more than **1 yr** (2) Selling to a person under 21 yrs old beer and wine not more than 4% alcohol by weight-Not more than **6 mos** §§67-1-81, 67-3-53 & 67-3-69
Fine ($ Range):	(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: 1st off-**$500-1,000**[1&2]; 2nd and subsequent offs-**$1,000-2,000**[1&2] (2) Selling to a person under 21 yrs old beer and wine not more than 4% alcohol by weight-Not more than **$500**[1&2] §§67-1-81, 67-3-53 & 67-3-69
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: 1st Off-Rev[3] §67-1-71; 2nd and subsequent Off-**Automatic Rev** §67-1-81 (2) Selling to a person under 21 yrs old beer and wine (not more than 4% alcohol by weight)-Rev/Susp[2&3]
Length of Term License Withdrawal:	(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: 1st off-Rev. length not specified §67-1-71; 2nd and subsequent offs-**Permanently rev.** §67-1-81 (2) Selling to a person under 21 yrs old beer and wine (not more than 4% alcohol by weight)-Rev. length not specified. However, persons who have had any alc. beverage license revoked may not apply for a license to sell light wine and beer (not more than 4% alc. by wgt.) for 2 yrs. §67-3-19(b)[2]
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**No**

[1]There is also a mand. State assessment of $47. §99-19-73(5) & (7)

[2]The following additional sanctions may also apply to licensees who sell beer and light wine (not more than 4% alcohol by weight) to persons under 21 yrs old: 1st Off-A fine of not more than $500 and lic. susp. for 3 months; 2nd Off-(w/n 12 mos)-A fine of not more than $1,000 and lic. susp. for 6 mos; and, 3rd & Subsequent Off-(w/n 12 mos)-A fine of not more than $500 and a lic. susp. for 1 yr. §67-3-69(3)

[3]A limited susp may be imposed in lieu of rev.

STATE:	**MISSOURI**
General Reference:	Vernon's Annotated Missouri Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Driving while intoxicated (while in an intoxicated or drugged condition)[1] §§577.001.2, & 577.010
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[2] §577.012
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	**Drugged Condition**[1] §577.010
Other:	A BAC/BrAC ≥**0.10** is *prima facie* evidence of intoxication.[2] §577.037 For Commercial Motor Vehicle Operators, see p. 3-275.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §577.021 & *Justice v. Director of Revenue,* 890 S.W.2d 728 (Mo.App. 1995)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §577.020.1
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §577.020.1
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** §577.041.1 (Criminal & Possibly Civil Cases), *State v. Berry,* 803 S.W.2d 37 (Mo.App. 1990), *State v. McCarty,* 875 S.W.2d 622 (Mo.App. S.D. 1994), & *State v. Myers,* 940 S.W.2d 64 (Mo.App. S.D. 1997)
Other Information:	Under "exigent circumstances", a blood sample may be withdrawn from a driver without their consent but prior to a DWI arrest if there is "probable cause" of such offense. *State v. Lerette,* 858 S.W.2d 816 (Mo.App. W.D. 1993)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §577.020.1
Urine:	**Yes** §577.020.1
Other:	**Saliva** §577.020.1

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**

[1]The term "intoxicated condition" means "under the influence of alcohol, a controlled substance, or drug, or any combination thereof." §577.001.2

[2]The illegal per se law provides that no one shall operate a motor vehicle with a 0.10 or more percent by weight of alcohol in the blood. Percent by weight of alcohol is defined as grams of alcohol per either 100 milliliters of blood or 210 liters of breath. §577.012.1 & .2 See §577.037 which concerns the admissibility of chemical test evidence to prove either an intoxicated or illegal per se offense and also defines "percent by weight of alcohol in the blood" to mean grams of alcohol per either 100 milliliters of blood or 210 liters of breath.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st Refusal-**Rev-1 yr** (90 dys mand) (A limited hardship license may be issued by the court after the 90 dy period.); 2nd or sub refusal (w/n 5 yrs)-**Rev-1 yr** (Mand) §§302.309.3(5)(e) & (f), and 577.041
Other:	A person must complete a substance abuse program before their license can be reinstated. §577.041.7

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	Intoxicated off, 1st off Cl B Misd-not more than **6 mos**; Per se off, 1st off Cl C Misd-not more than **15 dys**; Intoxicated/illegal per se offs; "prior offender"[1]-Cl A Misd-not more than **1 yr**; "persistent offender"[2]-Cl D Felony-Not more than **5 yrs** §§577.010, 577.012, 577.023, 558.011, 560.011 & 560.016
Mandatory Minimum Term:	"Prior" and "Persistent" Intoxicated/illegal per se offs-**48 cons hrs** §577.023.4 See Footnote No. 3.
Fine:	
Amount ($ Range):	Intoxicated off, 1st off-Not more than **$500**; Per se off, 1st off-Not more than **$300**; Intoxicated/illegal per se off, "prior offender"[1]-Not more than **$1,000**; "persistent offender"[2]-Not more than **$5,000**
Mandatory Min. Fine ($):	**None**

[1]A "prior offender" is a person who has had one previous alcohol related driving offense conviction w/n 5 years of the presently charged offense. §577.023 See the Historical Note below.
[2]A "persistent offender" is a person who has had two (2) or more previous alcohol related driving offense convictions w/n 10 years of the presently charged offense. §577.023 See the Historical Note below.
[3]For a "prior" or a "persistent" offender, except for community service, a court shall neither suspend the imposition of sentence nor allow the payment of a fine in lieu of imprisonment. §577.023.4

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Mayo,* 915 S.W.2d 758 (Mo.banc 1996)(cert. den., ____ U.S. ____, 117 S.Ct. 61, 136 L.Ed.2d 23 (1996)

Historical Note: In 1993, The Missouri Legislature amended §577.023 in order to clarify the meanings of the terms "prior offender" and "persistent offender". This action abrogated a Missouri Supreme Court decision which had interpreted these terms contrary to legislative intent. *State v. Stewart,* 832 S.W.2d 911 (Mo.banc 1992)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:	
Community Service:	In lieu of imprisonment, persons convicted of "Prior" and "Persistent" Intoxicated or Illegal per ser offs must perform at least **10 dys** of community service. §577.023.4
Restitution (eg Victim's Fund)	(1) Victim's compensation fund. §§595.010 et seq. (2) The court may also order direct compensation by defendants to victims. §§595.200 & 595.203
Other:	For a 1st intoxicated off., the sentence may be suspended provided the defendant is placed on probation for a minimum of 2 yrs. §577.010.2 **Assault.** A person, who injures another while driving either while intoxicated or illegal per se, commits assault in the second degree which is a Class C felony. The sanctions for this offense are imprisonment for not more than 7 yrs and a fine of not more than $5,000. §§558.011, 560.011 & 565.060
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-272 and the Special Note Nos. 1 below.
Administrative Per Se Law:	**Yes ≥0.10 BAC/BrAC**[1] For Persons Under 21 Years Old (See Special Note No. 2 below.) **≥0.02 BAC/BrAC**[1] §§302.309.3(5)(i) & 302.500 et seq. 1st Violation-**Susp-30 dys**[2&3] (mand) with a limited license for an additional 160 dys (provided there has been no prior "alcohol related enforcement contact"[4] (w/n 5 yrs) §§302.309.3(5)(h) & 302.525.2(1); Subsequent Violation-**Rev-1 yr**[2&5] (mand) (if there has been an "alcohol related enforcement contact"[3] w/n 5 yrs) (Restricted driving privileges may be granted pending the outcome of a trial de novo in the courts on an admin. per se action. §302.535) See the Special Note on p. 3-276.
Other:	**None**

[1]Standard: Percent by wgt. of alcohol in the blood. However, this concentration is defined to mean grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§302.500(1), 302.505.1 & 577.037.2

[2]Any period of admin. per se license suspension/revocation shall be credited against any period of time a person's license is suspended/revoked for a DWI offense conviction (§§577.010 & 577.012 offenses). The total license suspension/revocation period shall not exceed the longer of the two periods. §302.525.4

[3]*Barnes v. Director of Revenue,* 856 S.W.2d 108 (Mo.App. W.D. 1993), *Richard v. Director of Revenue,* 869 S.W.2d 913 (Mo.App. E.D. 1994), *State Ex Rel. Dir. of Revenue v. McHenry,* 861 S.W.2d 562 (Mo.banc 1993), and *Director of Revenue v. Pennoyer,* 944 S.W.2d 265 (Mo.App. E.D. 1997)

[4]The term "alcohol related enforcement contact" means either (1) an admin. per se action, (2) a refusal to submit to a chemical test under the implied consent law, or (3) a conviction for the offense of driving with an excessive alcohol concentration. The term may not include the offense of driving while intoxicated (§577.010 offenses). §302.525.3

[5]*Shelton v. Director of Revenue,* 861 S.W.2d 213 (Mo.App. W.D. 1993) & *Frieden v. Director of Revenue,* 864 S.W.2d 27 (Mo.App. S.D. 1993)

Special Note No. 1: The administrative per se law does not violate a person's constitutional right to equal protection of the laws. *Collins v. Director of Revenue,* 691 S.W.2d 246 (Mo.banc 1985)

Special Note No. 2: For administrative licensing action against a person <21 yrs old, who was operating a motor vehicle with a BAC/BrAC ≥0.02, it must be established that the original stop by law enforcement officers was base on "probable cause" that the drivers committed a drunk driving offense under either §§577.010 (driving while intoxicated) or 577.012 (illegal per se BAC/BrAC ≥0.10).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	Intoxicated off, 1st off-8 points[1]; Per se off, 1st off-6 points[1&2]; Intoxicated off where there was a prior Illegal Per Se off or an Illegal Per Se offense where there was a prior Intoxicated off[3]-**Rev** (12 points); 2nd off (w/n 5 yrs) of violating the laws related to driving while intoxicated-**Rev (Lic. Denial)** (12 points); 3rd and subsequent offs of violating the laws related to driving while intoxicated/illegal per se-**Rev (Lic. Denial)** (12 points). §§302.302.1 (7), (8) & (9) and 302.060(9) & (10) For persons under 21 who are convicted of any DWI offense-1st off **Susp**; 2nd or sub. off-**Rev** §577.500 et seq.
Term of License Withdrawal (Days, Months, Years, etc.):	Intoxicated off, 1st off-**30 dys** (plus 60 dys restricted driving privileges)[5] §302.304.4; Per se off, 1st off-**30 dys** (plus 60 dys restricted driving privileges)[2&5] §302.304.4; Intoxicated off where there was a prior Illegal Per Se off or an Illegal Per Se offense where there was a prior Intoxicated off[3]-**1 yr**; 2nd off (w/n 5 yrs) of violating the laws related to driving while intoxicated[4]-**5 yrs** §302.060(10); 3rd and subsequent offs of violating the laws related to driving while intoxicated[4]-**10 yrs/Permanent**[6] §302.060(9). For persons under 21 who are convicted of any DWI offense-1st off-Susp **90 dys**; 2nd or sub. off-Rev **1 yr** §§577.500.5, & 577.510

[1]**Point System:** Under the point system, 8 points equals a suspension and 12 points equals a **rev** for **1 yr**. §§302.302.1 and 302.304.2, .3, .4 & .5 Note: Under §302.304. 3 & .4, different license suspension periods apply in the case of DWI offenders as opposed to other offenders who have accumulated points under §302.302. See IV under the Special Note on p. 3-276.
[2]License susp action would occur only if the defendant had at least 2 more points on his/her record from some other driving offense. I.e., a first illegal per se off conviction alone would not result in a license susp action. §§302.302, 302 and 302.304.4 However, if the defendant has accumulated sufficient points together with an illegal per se conviction, their license is suspended by the licensing agency for a mandatory 30 dy period which may be followed by restricted hardship driving privileges for 60 dys. §302.304.4
[3]I.e., a 1st Intoxicated Offense where the driver has had a previous conviction for an Illegal Per Se offense or a 1st Illegal Per Se offense where the driver has had a previous conviction for an Intoxicated Offense.
[4]**Special Note:** Sec. 302.060(9) provides that a person, who has been convicted "more than twice" of an offense "relating to driving while intoxicated", is subject to a denial of driving privileges for at least 10 yrs. The term "relating to driving while intoxicated" has been interpreted to include illegal per se offenses. *Wilson v. Director of Revenue,* 873 S.W.2d 328 (Mo.App. E.D. 1994)
[5]Under §302.304.4, the licensing agency may grant restricted driving privileges for 60 dys following the 30 dy mand. period for the purpose of employment or for attending an alcohol education/treatment program. Also, under §302.309.3(5)(a), a court or the licensing agency may grant limited driving privileges for employment, educational or medical reasons after the 30 dy mandatory period.
[6]*Appleby v. Director of Revenue,* 851 S.W.2d 540 (Mo.App. W.D. 1993)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of Withdrawal:

1st off Intoxicated off-**30 dys** See Footnote No. 5 on p. 3-274. 1st Per Se off-**None** See Footnote Nos. 2 & 5 on p. 3-274. Intoxicated off where there was a prior Illegal Per Se off or an Illegal Per Se offense where there was a prior Intoxicated off-**1 yr** See Footnote No. 3 on p. 3-274. 2nd off (w/n 5 yrs) of violating the laws related to driving while intoxicated-**2 yrs** See Footnote No. 4 on p. 3-274. After 2 yrs, restricted driving privileges may be granted. After 5 yrs, driving privileges may be fully restored. 3rd and sub. off-**3yrs/10yrs/Permanent** After 3 yrs hardship driving privileges may be granted. **Important.** See the Special Note below. After 10 yrs of the revocation period have passed, a court may order the licensing agency to issued an offender a license provided the offender is no longer a threat to the public safety. Such an order can only be issued once. See the Comment below. See Footnote No. 4 on p. 3-274. §§302.060(9) & (10), 302.304, sub. 6 and 302.309, sub. 3(6)
A person under 21 yrs old, who is convicted of a DWI offense, has their driver's license suspended for 90 dys for a 1st off and revoked for 1 yr for a 2nd or sub. off. A restricted lic. is available via §302.309. See the Note below. §§577.500 & 577.510

Note: I. A limited license via either a court order or licensing agency is available for employment, educational or medical purposes. Such a license cannot be issued to a person who has been convicted of a 2nd or subsequent Intoxicated offense. §302.309.3(5)(c)
II. No limited driving privileges of any type may be granted to a person who has been convicted of operating a motor vehicle while under the influence of either narcotic drugs or a controlled substance. §302.309.3(5)(d)

Comment: Even though the law is not perfectly clear, it would appear that, if a person cannot obtain a license (full driving privileges after 10 yrs via court order), they are ineligible for hardship driving privileges.

Special Note: The Missouri Supreme Court has held that a person, who has been convicted of a felony drunk driving offense, is ineligible for hardship driving privileges. Under §302.309.3(6)(a), a person may be granted such privileges unless they are "otherwise ineligible". An ineligible person, under §302.309.3(5)(b), includes a person, who has been convicted of a felony in which a motor vehicle was used. The court interpreted the term "felony" in §302.309.3(5)(b) to include any person who has been convicted of a felony drunk driving offense. As a result, hardship driving privileges cannot be granted to such a person. *Hagan v. Director of Revenue,* 968 S.W.2d 704 (Mo.banc 1998)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or drugs or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any "measurable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Finally, it is a Class B misd to drive A CMV with either BAC/BrAC/UrAC ≥0.04 or while under the influence of either alcohol or a controlled substance. Note: The term "controlled substance" may not apply to all drugs. §302.780(1)(3) The sanctions for this offense are imprisonment for not more than 6 mos and/or a fine of not more than $500. §§302.309.3(5)(g), 302.700.2(2), (6), (10), (13) & (14), 302.745, 302.750, 302.755 and 302.780

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:
Rehabilitation:
Alcohol Education: Intoxicated off, 1st off-**Yes**; Per se off-1st off-**Yes** Required for persons under 21 years old who have committed an alcohol offense. §577.525 See the Special Note below.

Alcohol Treatment: Intoxicated off, 1st off-**Yes**; Per se off, 1st off-**Yes** See the Special Note below.

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: **Impoundment/Forfeiture.** Under §82.1000, certain cities with populations over 100,000 may enact motor vehicle impoundment or forfeiture ordinances. I. A motor vehicle is subject to such action if (1) the diver has had one or more intoxicated related traffic offense convictions (including illegal per se) and (2) they are operating the vehicle while their license is in a suspended or revoked status either for an intoxicated related traffic offense or for involuntary manslaughter related to intoxicated driving. II. A motor vehicle is subject to such action if the diver has had two or more intoxicated related traffic offense convictions (including illegal per se) and they either have a BAC/BaAC ≥0.10 (≥0.02 if <21 yrs old) or they refuse to submit to chemical test under the implied consent law. **Important:** The above actions apply to the vehicle operated by the offender irrespective of its ownership.

Terms Upon Which Vehicle Will Be Released:
Other: **None**

Miscellaneous Sanctions Not Included Elsewhere: **DWI Enforcement Cost.** A court may require a person convicted of a DWI offense to "reimburse" either the State or local governments for the costs "associated" with the person's DWI arrest. §577.048
Ignition Interlock.[1] In addition to any other sanctions for either an intoxicated or illegal per se drunk driving offense, the court as a condition of probation may, in the case of a 1st offender, and must, in the case of a 2nd offender[2], require such a person to only operate motor vehicles that are equipped with an ignition interlock device. Such a requirement may also be imposed as a condition for granting limited (hardship) driving privileges under §302.309. §577.600

[1]A court cannot order the use of an ignition interlock device if the cost of installing, calibrating or servicing the device would impose an "undue hardship" on the defendant. §577.602
[2]In the case of 2nd offenders, the court is not required to mandate the use of these devices as a condition for obtaining limited (hardship) driving privileges if the device cannot be installed within 50 miles of the county seat of the defendant's residence. §577.602(1)

Special Note: I. For either a 1st or subsequent intoxicated/illegal per se conviction, the court must order a defendant to successfully completed an alcohol or drug education or rehabilitation program. §577.049 II. For persons who have violated the administrative per se law, driving privileges cannot be restored until they have successfully completed an alcohol or drug education or rehabilitation program. §302.540.1 III. Persons <21 yrs old, who have been convicted of any DWI offense, cannot have their driving privileges restored until they successfully complete an alcohol or drug education program. §577.520.1 IV. If a driver's license has been either suspended or revoked under the point system for a drunk driving offense, such license cannot be reinstated until the driver completes a substance abuse program. §302.302.13

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** (Cl C felony) Involuntary Manslaughter where death is caused by operating a motor vehicle while in an intoxicated condition and with criminal negligence. §565.024
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **7 yrs** §558.011
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$5,000** §560.011
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev (License Denial)** §302.060(10)
Length of Term of Licensing Withdrawal:	**5 yrs** §302.060(10)
Mandatory Action--Minimum Length of License Withdrawal:	**5 yrs** §302.060(10)
Other:	Victim's compensation fund §595.010 et seq.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote Nos. 1 & 2.
Sanction:	
Criminal:	
Imprisonment (Term):	Not more than **1 yr** (Cl A misd) §§302.302, 302.321 and 558.011
Mandatory Minimum Term of Imprisonment:	**48 cons hrs** (In lieu of imprisonment, the defendant may perform at least 10 dys (involving at least 40 hrs) of community service.) §302.321
Fine ($ Range):	Not more than **$1,000** §560.016
Mandatory Minimum Fine:	**None**

[1]An offender must act "with criminal negligence with respect to knowledge of the fact that his driving privilege has been canceled, suspended or revoked." §302.321.1

[2]I. It is a Cl A misd to operate a CMV during a CDL disqualification. The sanctions for this offense are imprisonment for not more than 1 yr, a fine of not more than $1,000 and CDL license revocation for 2 yrs. An offender must serve either 48 con hrs of confinement or 10 dys (at involving least 40 hrs) of community service. §§302.725, 558.011.1(5) & 560.016.1(1) II. It is also a Cl A misd to operate a CMV while under a CDL out-of-service order. Again, the sanctions for this offense are imprisonment for not more than 1 yr, a fine of not more than $1,000. However, a violator is also subject to a civil penalty of $1,000 and the following CDL disqualification periods: 1st off-90 dys; 2nd off (w/n 10 yrs)-1 yr; and 3rd and sub off (w/n 10 yrs)-3 yrs. §§302.755, 302.756.1 558.011.1(5) & 560.016.1(1)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Rev** Under the point system-12 points §302.302.1(5)
Length of Term of License Withdrawal Action:	**1 yr** §302.304.6
Mandatory Term of License Withdrawal Action:	**None** Restricted hardship driving privileges may be granted. This privilege, however, may only be granted once in 5 yrs. §302.309.3(5) **Special Note:** See Vehicle Impoundment/Confiscation under Sanctions Following a Conviction for a DWI Offense on p. 3-276.

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §§58.445, 58.447 & 58.449
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**Yes**
Pedestrian:	**Yes**

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1945) §§311.310, 311.325, 312.400 & 312.407
Minimum Age (Years) Possession:	**21** §§311.325 & 312.407
Minimum Age (Years) Consumption:	**None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** §537.053[1] A cause of action for personal injuries or death may only be brought against a liquor by the drink licensee who has been convicted of the offense of selling alcoholic beverages by the drink either to a person under 21 years old or to an obviously intoxicated individual provided such sale was the proximate cause of the injury or death. *Childress v. Sams,* 736 S.W.2d 48 (Mo.banc 1987)
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** Note: Prior case law has been abrogated via statute. §537.053
Dram Shop Actions-Social Hosts:	**No** *Childress v. Sams,* 736 S.W.2d 48 (Mo.banc 1987), *Andres v. Alpha Kappa Lambda Fraternity,* 730 S.W.2d 547 (Mo.banc 1987), *Stottle v. Brown Group, Inc.,* 801 S.W.2d 479 (Mo.App. S.D. 1990), & *Shelter Mut. Ins. Co. v. White,* 930 S.W.2d 1 (Mo.App. W.D. 1996)
Other:	An injured intoxicated patron may being a cause of action for damages under the dram shop act (§537.053). Of course, the same pre-condition (i.e., a licensee's conviction for a liquor law violation) still applies. *Von Ruecker v. Holiday Inns, Inc.,* 775 S.W.2d 295 (Mo.App. E.D. 1989), cert. den. 493 U.S. 1075

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:	**Misd** §§311.310, 311.720, 311.880, 312.400, 312.500 & 312.510
Term of Imprisonment:	Not more than **1 yr**
Fine ($ Range):	**$50 to $1,000**

[1]Section 537.053 was held to be constitutional under both State and Federal constitutions. *Simpson v. Kilcher,* 749 S.W.2d 386 (Mo.banc 1988)

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev** §§311.720 & 312.510
Length of Term of License Withdrawal:	For licensees who sell alc. bev. over 3.2% alc. by wgt.-Length of rev. is not specified in the statute; for licensees who sell non-intoxicating beer (over 0.5% but not more than 3.2% alc. by wgt.)-**1 yr rev**

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:	**Misd** §§311.310, 311.880, 312.400, 312.500 & 312.510
Term of Imprisonment:	Not more than **1 yr**
Fine ($ Range):	**$50 to $1,000**

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev** §§311.720 & 312.510
Length of Term License Withdrawal:	For licensees who sell alc. bev. over 3.2% alc. by wgt.-Length of rev. is not specified in the statute; for licensees who sell non-intoxicating beer (over 0.5% but not more than 3.2% alc. by wgt.)-**1 yr rev**

Anti-Happy Hour Law/Regulations: **No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Applies to persons while they are operating a vehicle. §577.017

STATE:	**MONTANA**
General Reference:	Montana Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §61-8-401(1)(a)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1&2] §61-8-406 Persons Under 21 Years Old-≥**0.02** §61-8-410
Presumption (BAC/BrAC):	≥**0.10**[2] §61-8-401(4)(c)[3]
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**, (2) a Dangerous Drug or (3) Alcohol and Any Dangerous or Other Drug §61-8-401(b), (c) & (d).
Other:	For Commercial Motor Vehicle Operators, see p. 3-286.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes**[4] §§61-8-409 & 61-8-806(1) (CMV operators)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §61-8-402(1)[5]
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §61-8-402(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §61-8-404(2)[6]
Other Information:	**None**

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §61-8-402(1)
Urine:	**No**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**[7]
Anti-Plea Bargaining Statute (Yes/No):	**No**

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of 0.10 or more or (2) a urine alcohol concentration of 0.10 or more.
[2]The standards for "alcohol concentration" are (1) grams of alc. per 100 milliliters of blood or (2) grams of alc. per 210 liters of breath. §61-8-407
[3]The law uses the term "inferred" instead of "presumed". This "inference" is rebuttable. **Historical Note:** The State legislature amended the law in 1991 to substitute the term "inferred" for that of "presumed". This change was made to "correct" what the Montana Supreme Court apparently felt was an unconstitutional provision. In *State v. Leverett,* 799 P.2d 119 (Mont. 1990), the State supreme court held that a jury instruction, associated with the previous statutory language, created a "mandatory presumption" that unconstitutionally shifted the burden of proof of a driving while under the influence offense to the defendant.
[4]The results of a PBT test may used as evidence in a drunk driving offense trial. §61-8-404
[5]**Special Note:** The implied consent law does not make reference to the illegal per se law (§61-8-406).
[6]This provision was held constitution on both Federal and State grounds. *State v. Jackson,* 672 P.2d 255 (Mont. 1983)
[7]A DWI offender is not eligible for pretrial diversion. §46-16-130(3)

Adjudication of DWI Charges:

Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** Alcohol Screening §61-8-732(2)[1&2]

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): Same as for implied consent. §61-8-409(4)
Other: **None**

Refusal to Take Implied Consent Chemical Test:
Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): 1st Refusal-**Susp-6 mos** (mand); 2nd or subsequent refusals (w/n 5 yrs)-**Rev-1 yr** (mand) No restricted probationary license can be issued. A peace officer shall seize the defendant's license and forward it to the driver licensing agency. §61-8-402[3]
Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: See the Special Note on p. 3-283.
Important. For offenders under 21 years old, see p. 3-285.

Imprisonment:
See the Special Note below.
Term (Day, Month, Years, Etc.):

I. Driving While Under the Influence Offs (misd)[4&5]: 1st Off-**24 cons hrs to 60 dys**; 2nd Off (w/n 5 yrs)-**7 dys to 6 mos**; 3rd Off (w/n 5 yrs)-**30 dys to 1 yr**; 4th or Sub Off (w/n 5 yrs) (felony)-**6 to 13 mos** §§61-8-401, 61-8-711(1), 61-8-714, 61-8-731 & 61-8-734
II. Illegal Per Se Offs (misd)[5]: 1st Off-Not more than **10 dys**; 2nd Off (w/n 5 yrs)-**48 cons hrs to 30 dys**; 3rd Off (w/n 5 yrs)-**48 cons hrs to 6 mos**; 4th or Sub. Off (w/n 5 yrs) (felony)-**6 to 13 mos** §§61-8-406, 61-8-711(1), 61-8-722, 61-8-731 & 61-8-734
Special Note: For sentence enhancement purposes, a subsequent offense under either I or II above includes a prior offense of the other. §61-8-734(1)(c)

[1]**Comment:** This section provides that a defendant complete either an alcohol or drug treatment program if such is deemed necessary by a counselor. Alcohol or drug screening appears to be indirectly authorized via counselors as part of the law's requirement that a defendant participate in these programs.
[2]Note: A PSI is given if the crime carries a prison sentence of **1 yr** or more. §46-18-111
[3]**Comment:** Sec. 61-8-402 clearly provides that no restricted probationary license can be issued following susp/rev for an implied consent law violation. However, it may be possible to "stay" any licensing action if the person participates in a driver rehab/improvement program. §61-2-302 See Footnote No. 2 on p. 3-285.
[4]Driving While Under the Influence (alcohol or drugs) offenses except illegal per se (BAC/BrAC ≥0.10).
[5]Imprisonment term can be served in a "facility" other then a jail. §61-8-734(2)

Sanctions Following a Conviction for a DWI Offense:
(continued)

III. Neg. Veh. Assault (misd)[1]-**Not more than 1 yr** §§45-2-101(41) and 45-5-205(1) & (2)
IV. Neg. Veh. Assault (felony)[2]-**Not more than 5 yrs** §§45-2-101(22) & 45-5-205(3)

Mandatory Minimum Term:

I. Driving While Under the Influence Offs:[3]: 1st Off-**24 cons hrs** must be served in the county jail and cannot be served as "home arrest" (may only be suspended for the defendant's physical and mental well-being); 2nd Off-**3 dys, 48 con hrs** must be served in the county jail and cannot be served as "home arrest" (may not be suspended except for the defendant's physical or mental well-being); 3rd Off-**10 dys, 48 hrs** must be served in the county jail and cannot be served as "home arrest"; 4th of Sub Off (felony)-**6 mos** §§61-8-714, 61-8-731 & 61-8-734
II. Illegal per se offs[3]: 1st Off-**None**; 2nd & 3rd Offs-**48 con hrs** must be served in the county jail and cannot be served as "home arrest"; 4th or Sub Off (felony)-**6 mos** §§61-8-722 , 61-8-731 & 61-8-734
III. Neg. Veh. Assault (misd)-**None**
IV. Neg. Veh. Assault (felony)-**None**

Fine:
Amount ($ Range):

I. Driving While Under the Influence Offs: 1st Off-**$100 to $500**; 2nd Off (w/n 5 yrs)-**$300 to $500**; 3rd Off (w/n 5 yrs)-**$500 to $1,000**; 4th or Sub. Off (w/n 5 yrs) (felony)-**$1,000 to $10,000** §§61-8-401, 61-8-711(1), 61-8-714, 61-8-731 & 61-8-734
II. Illegal Per Se Off: 1st Off-**$100 to $500**; 2nd Off (w/n 5 yrs)-**$300 to $500**; 3rd Off (w/n 5 yrs)-**$500 to $1,000**; 4th or Sub. Off (w/n 5 yrs) (felony)-**$1,000 to $10,000** §§61-8-711(1), 61-8-722, 61-8-731 & 61-8-734
III. Neg. Veh. Assault (misd)-Not more then **$1,000** §45-5-205(2)
IV. Neg. Veh. Assault (felony)-Not more then **$10,000** §45-5-205(3)(a)

Mandatory Min. Fine ($):

None

[1]Negligent Vehicle Assault-A person commits a misd if they cause body injury to another person while driving while under the influence of alcohol, a dangerous drug, any drug or any combination of these.
[2]Negligent Vehicle Assault-A person commits a felony if they cause serious body injury to another person while driving while under the influence of alcohol, a dangerous drug, any drug or any combination of these.
[3]See Home Detention under Miscellaneous Sanctions on p. 3-286.

Special Note: For sanction enhancement purposes for either driving while under the influence or illegal per se, a prior offense includes a conviction for either offense. §61-8-734

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:	
Community Service:	**Yes** Imposed as part of deferred sentencing. §46-18-201(1)(a)(ix). Even though §46-18-201(1)(a) provides for community service as part of deferred sentencing, this section also provides that the court is not to defer the imposition of the of sanctions (e.g., mand imprisonment) for drunk driving offenses.
Restitution (eg Victim's Fund)	**Yes** (1) If a person has suffered a pecuniary loss as a result of the defendant's illegal actions, the court must order the defendant pay restitution to such person. A defendant may be ordered to participate in community service if they are financially unable to pay restitution. §46-18-241 (2) A victim can also receive compensation from the State's Victims' Compensation Fund. §53-9-101 et seq. (3) Persons convicted of serious bodily negligent vehicle assault shall be ordered to pay restitution. §34-5-205(3)(b)
Other:	**Fourth or Subsequent Offense Probation.** A person, who has been convicted a fourth or subsequent time for any drunk driving offense, must be placed on probation for not less than 1 yr nor more than 4 yrs. §61-8-731(1)(b)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	Under §§61-5-206 & 61-5-208, a person's license can be susp for not more than 1 yr if they are involved in an accident resulting in either a death, personal injury or serious property damage. Such action may be taken without a preliminary hearing.
Post DWI Conviction Licensing Action:	**Important.** I. For Persons Under 21 and 18 Years Old, see p. 3-285. II. See **Ignition Interlock** under Miscellaneous Sanctions on p. 3-286.
Type of Licensing Action (Susp/Rev):	All Drunk Driving Offs[1&2]: 1st Off-**Susp**; 2nd off (w/n 5 yrs)-**Rev**; 3rd and subsequent off (w/n 5 yrs)-**Rev** Neg. Veh. Assault-**Rev** §§61-5-205(2) & (7) and 61-5-208
Term of License Withdrawal (Days, Months, Years, etc.):	All Drunk Driving Offs[1]: 1st Off-**6 mos**; 2nd off (w/n 5 yrs)-**1 yr**; 3rd and subsequent off (w/n 5 yrs)-**1 yr** Neg. Veh. Assault-**1 yr** §§61-5-205(2) & (7) and 61-5-208

[1]Includes illegal per se offs.
[2]Under §61-11-203(2)(d), a person receives 10 points on their driving record for either a regular DWI or an illegal per se off conviction.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of Withdrawal:	All Drunk Driving Offs[1]: 1st Off-**None**[3&4]; 2nd and subsequent off (w/n 5 yrs)-See Footnote Nos. 2 & 3 and the Special Note under Alcohol Education below. Neg. Veh. Assault-See Footnote Nos. 2 & 3. Important. See **Ignition Interlock** on p. 3-286.
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** 1st and sub. offs[4&5] - Mandatory participation in either an alcohol education or treatment program. §61-8-732 **Special Note:** Under §61-5-208(2), for 2nd and sub. offs (w/n 5 yrs), a person's license is rev for 1 yr or until they complete an alcohol education/treatment program whichever is longer.
Alcohol Treatment:	**Yes** See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Vehicle Forfeiture.** For a 3rd or subsequent driving while under the influence offense or illegal per se offense (w/n 5 yrs), the driver's vehicle must be forfeited. §61-8-733

[1]Includes illegal per se offs.
[2]Under §61-2-302, a person, who has had their driving privileges susp or rev, may have such action stayed (or may be issued a restricted probationary license), if they participate in a driver rehabilitation or improvement program. A person is eligible to participate in such a program if they meet one of the following two conditions. (1) They are subject to susp/rev because of a violation of the traffic laws or (2) they have completed 3 mos of a 1 yr rev (or have completed 1 yr of a 3 yr rev) and otherwise met the requirements for "reobtaining" a driver's license. Important: A person is not eligible to participate in this program if they are participating in the "ignition interlock" program. §61-2-302(2)
[3]Note: Under §61-11-101(2), a court may recommend that a restricted probationary license be issued in lieu of a susp on the condition that the person attends, if available, an alcohol treatment program.
[4]Driving while under the influence and illegal per se offenses.
[5]For driving while under the influence and illegal per se offenses, a restricted license may be issued on condition that the offender participates in an alcohol education or treatment program. §61-11-101(2) See Footnote No. 2 above

Sanctions Against Persons Under 21 Years Old Who are Operating a Motor Vehicle with a BAC/BrAC ≥0.02. 1st offense-A fine of not less than $100 nor more than $500 and license suspension for 90 dys (30 dys mand if the offender is <18 yrs old). 2nd offense-A fine of not less than $200 nor more than $500; license suspension for 6 mos (30 dys mand if the offender was <18 yrs old); and, if the offender was >18 yrs old, an incarceration term of not more than 10 dys. 3rd or subsequent offense-A fine of not less than $300 nor more than $500; license suspension for 1 yr (30 dys mand if the offender was <18 yrs old); and, if the offender was >18 yrs old, an incarceration term of not less than 24 con hrs nor more than 60 dys. In addition to these sanctions, an offender must comply with the alcohol information course and alcohol and drug treatment provisions of §61-8-714. §61-8-410 **Comment:** Offenders <18 years old, who have a BAC/BrAC ≥0.10, could also be subject to the sanctions below.

Sanctions Against Persons Under 18 Years Old Who Violate Either the Driving Under the Influence or Illegal Per Se Laws. Under separate provisions of law, offenders <18 yrs old are subject to the following sanctions if the operate a motor vehicle either while under the influence of alcohol or drugs or with BAC/BrAC ≥0.10 (illegal per se). (1) A fine may be imposed; this fine cannot exceed that which could be imposed on an adult. (2) Their license may be susp/rev; the period of susp/rev is set by the court. And, (3) The vehicle owned by or used by the minor may be impounded for 60 days. An offender <18 yr old cannot be incarcerated for these offenses. §61-8-723

Sanctions Following a Conviction for a DWI Offense:
(continued)

Terms Upon Which Vehicle Will Be Released:

Other:

Miscellaneous Sanctions Not Included Elsewhere:

Home Detention. Except for the initial 24 hrs of a 1st off[1] or the initial 48 hrs of a 2nd or sub. off[2], an offender may be allowed to serve their incarceration term under "home arrest". §61-8-734(3)

Incarceration Costs. A defendant may be allowed to serve a term of imprisonment in a non-jail facility such as a prerelease center. Except for 4th or subsequent offenses, an offender, if financially able, must pay the expenses for such alternative incarceration. §61-8-734(2)

Ignition Interlock. Via an order, a court may restrict an offender to only operate motor vehicles that are equipped with "ignition interlock devices" provided one of the following conditions is satisfied: (1) The defendant has a prior drunk driving offense conviction or (2) they had a blood alcohol concentration ≥0.18. Important. Licensing action against a person for a drunk driving offense is stayed while they are participating in the "ignition interlock" program. §61-5-208(3) The duration of this restriction is equal to the period of license suspension or revocation. §61-8-442

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law: **No** See Footnote No. 3.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

[1]Driving while under the influence offenses.

[2]Includes all drunk driving offenses

[2]Even though this State does not have a vehicle homicide statute, it nevertheless, provides for a **1 yr** license rev following a conviction for manslaughter resulting from the operation of a motor vehicle. §61-5-205(1) There is a mandatory revocation period of 3 mos. After this 3 months, a probationary restricted license may be issued for the remaining portion of the revocation period if a person complies with the terms of a driver improvement program. §61-2-302(9)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "suspended" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they either (1) have an "alcohol concentration" ≥0.04 (Note: See Footnote No. 2 on p. 3-281.), (2) are convicted of violating the drunk driving laws (§§61-8-401 or 61-8-406) or (3) refuse to submit to a chemical test for an alcohol concentration. For a subsequent violation of operating a CMV with an "alcohol concentration" ≥0.04, the "suspension" is for life with 10 yrs mand as may be allowed by Federal regulations. For a subsequent refusal to submit to a chemical test, the "suspension" is for life with 10 yrs mand as may be allowed by Federal regulations. For a second drunk driving offense conviction associated with operating a CMV, the "suspension" is for life except as allowed by Federal regulations. For a third drunk driving offense conviction associated with operating a CMV, the "suspension" is for life (mand). A person who operates a CMV with "any measurable amount or detected presence of alcohol" must be placed "out-of-

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term:	
Fine ($ Range):	
Mandatory Minimum Fine:	
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	
Length of Term of Licensing Withdrawal:	
Mandatory Action--Minimum Length of License Withdrawal:	
Other:	

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote Nos. 1 & 2.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd 2 dys to 6 mos** §61-5-212
Mandatory Minimum Term of Imprisonment:	**2 dys**
Fine ($ Range):	Not more than **$500** §61-5-212
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp or rev** §61-5-212
Length of Term of License Withdrawal Action:	The period of such susp or rev is extended for an additional like period. §61-5-212
Mandatory Term of License Withdrawal Action:	Note: There appears to be no mandatory licensing action. A restricted license may be issued. §61-2-302(9)

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §61-11-201 et seq.
Grounds for Being Declared an Habitual Offender:	Accumulation of 30 points in a 3 yr period Note: A DWI offense = 10 points. §61-11-203(2)
Term of License Rev While Under Habitual Offender Status:	**Rev 3 yrs** If a driver participates in a driver rehabilitation and improvement program, a restricted probationary license may be issued after 1 yr of the revocation period has passed. §§61-2-302(2)(a)(ii) & (9), 61-11-211 and 61-11-212

[1]**CMV Operators.** I. The sanctions given for driving while suspended or revoked also apply to CDL operators who drive a CMV while their privileges to operate such a vehicle are suspended. §61-5-2121 II. A CMV operator, who violates an out-of-service order is subject to the following CDL suspensions: 1st off-6 mon (mand); 2nd off (w/n 10 yrs)-1 yr (mand); 2nd off (w/n 10 yrs) while transporting hazardous materials or more than 15 passengers-3 yrs (mand); and, 3rd off (w/n 10 yrs)-3 yrs mand. §61-8-812

[2]A first offender, who had their license suspended or revoked for any drunk driving related offense, must have the vehicle owned and operated by them seized or rendered inoperable for 30 dys.

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Misd** §§61-11-201 & 61-11-213
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not less than **14 dys** nor more than **1 yr**
Mandatory Minimum Term of Imprisonment:	**14 dys**[1]
Fine ($ Range):	Not more than **$1,000**
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**Yes** License revocation is extended for an additional period of 1 yr. §61-11-213

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[2] (Year Eff: 1987) §§16-3-301(3)(a) & (4) & 16-6-305(b)
Minimum Age (Years) Possession:	**21**[3] §45-5-624(1)(b) There is an employment exemption.
Minimum Age (Years) Consumption:	**21**[3]

[1]A 14 dy jail sanction appears to be mandatory. However, the law is not specific on this point.

[2]The law does not make it illegal for a person under 21 years old to purchase alcoholic beverages. However, it is illegal for such a person to knowingly attempt to purchase an "intoxicating substance". §45-5-624(3) Note: It is also a crime for a minor to "misrepresent" their age in order to obtain alcoholic beverages. §16-3-301(4)

[3]The law makes it an offense for certain persons to have in their possession an "intoxicating substance". For persons under 21 years old, this includes alcoholic beverages. Indirectly, the law appears to provide that the offense of possession of an alcoholic beverage includes consumption. First, under §45-5-624(1)(a), a person under 19 years old commits the "offense of possession of an intoxicating substance" if they either possess or consume such substance. Second, under §45-5-624(1)(b), a person under 21 years old commits the "offense of possession of an intoxicating substance" if they possess an alcoholic beverage. However, subsection (1)(b) does not restate the provisions of subsection (1)(a) by clearly providing that possession also includes consumption. Instead, subsection (1)(b) states that "a person does not commit the offense if the person consumes or gains possession of the beverage" in a lawful manner. Accordingly, the law appears to only indirectly make consumption of an alcoholic beverage by a person under 21 years old illegal.

Other Criminal Actions Related to DWI: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** §27-1-710[1,2&3] Note: The case law indicated below may have been abrogated by this statute.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Hehring v. La Counte,* 712 P.2d 1329 (Mont. 1986), & *Bissett v. DMI, Inc.,* 717 P.2d 545 (Mont. 1986) Note: These cases may have been indirectly abrogated by §27-1-710.
Dram Shop Actions-Social Hosts:	**Yes Limited** §27-1-710 See Footnote No. 2.
Other:	**None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:	**Misd** §§16-3-301(3)(b), 16-6-304, 16-6-314 & 46-18-212(3)(b)
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$500** Note: A civil fine may be assessed by the licensing agency and such fine is not to exceed $1,500. §16-4-406

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev** §16-4-406
Length of Term of License Withdrawal:	Not be more than 3 mos, the period of rev is not specified in the statute

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:	**Misd** 16-3-301(3)(a), 16-6-305, 16-6-314 & 46-18-212
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$500** Note: A civil fine may be assessed by the licensing agency and such fine is not to exceed $1,500. §16-4-406

[1]Licensees are liable for the injuries caused by patrons who are either under the legal drinking age (i.e., <21 yrs old) or "visibly intoxicated". Note: The dram shop law also applies to innkeepers. §70-6-513

[2]Under §§16-6-305(1)(b) and 27-1-710, a person over 21 can be held liable for the tortuous actions of a minor if such person sold/gave alcoholic beverages to the minor in an "intoxicating quantity." An "intoxicating quantity" is an amount of alcohol that could produce either (1) a BAC of 0.05 or more or (2) substantial, visible mental or physical impairment. §16-6-305(1)(c)

[3]*Jevning v. Skyline Bar,* 726 P.2d 326 (Mont. 1986)

Other Criminal Actions Related to DWI: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic everages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev** §16-4-406
Length of Term License Withdrawal:	The period of susp may not be more than 3 mos; The period of rev. is not be specified in the statute.
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Limited**[1] §16-3-106(2)
Anti-Consumption Law (Yes/No):	**Limited**[1] Driver and passengers §16-3-106(2)

[1]The law states that "no common carrier or any other person shall open, break, or allow to be opened or broken any package or vessel containing liquor or drink or allow to be drunk or used any liquor there from while being carried or conveyed." **Comment:** Because this language appears in the alcoholic beverage control provisions of the Montana Code, this law may be limited only to persons who are operating "common carriers".

STATE:	**NEBRASKA**
General References:	Revised Statutes of Nebraska & Nebraska Administrative Code (NAC)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic liquor §60-6,196(1)(a)
Illegal Per Se Law (BAC/BrAC):	**≥0.10**[1&2] §60-6,196(1)(b) & (c) Persons Under 21 Years Old-**BAC/BrAC ≥0.02 but <0.10**[2] Traffic Infraction (Civil Offense) §§60-6,211.01 & 60-672
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of **Any Drug** §60-6,196(1)(a)
Other:	For Commercial Motor Vehicle Operators, see p. 3-295.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §§60-6,197(3) & 60-6,211.02(2)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[3] §60-6,197(2)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §60-6,197(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** §60-6,197(11) (Criminal Cases) & *State v. Romell,* 204 N.W.2d 573 (1973)
Other Information:	A driver, who has been involved in an accident and where there is reasonable grounds that the driver is DWI, may be required to submit to a chemical test to determine if they have either alcohol or drugs in their system. Injury or death is not a prerequisite for this requirement.[4] §60-6,197(9)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §60-6,197(1)
Urine:	**Yes** §60-6,197(1)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No** Pretrial diversion of DWI cases is prohibited. §29-3604
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes**[5] Alcohol screening required either for a 1st offender or for a sub. offender who has not received such a screening. §60-6,196(8)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.
[2]Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §§60-6,196(1) & 60-6,211.01
[3]Probable cause (not an arrest) is need to prior to requesting a person under 21 yrs old to submit to a test for evidence related to a violation of §60-6,211.01 (driving with a BAC/BrAC ≥0.02). §60-6,211.02(2)
[4]A surviving driver (or pedestrian) 16 years old or older, who is involved in an accident where there has been a fatality, shall be required to submit to a chemical test of their blood, breath or urine in order to determine the amount of alcohol or drugs in their body. The tests' results and the identity of the persons tested are considered public records and are subject to being disclosed. §§60-6,103 & 60-6,104
[5]"A court may order a presentence investigation in any case." §29-2261(2) & (3)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): Class V misd **$100 fine**, no imprisonment §§28-106 & 60-6,197(3)

Administrative Licensing Action (Susp/Rev): **None**

Other: Persons Under 21 Years Old. A person under 21 yrs old, who refuses to submit to a preliminary breath test to determine if they were driving with a BAC/BrAC ≥0.02, may be arrested for a violation of §60-6,211.01. §60-6,211.02(2)

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): Important: See Persons Under 21 Years Old on p. 3-293.
1st off (Cl W misd)-Not more than **$500/60 dys**; 2nd off (w/n 12 yrs)(Cl W misd)-Not more than **$500/90 dys**; 3rd off (w/n 12 yrs)(Cl W misd)-Not more than **$600/1 yr**; 4th or sub. off (w/n 12 yrs)(Cl IV felony)-Not more than **$10,000/5 yrs** See Footnote No. 1 on p. 3-293. §§28-105, 28-106 & 60-6,197
Mandatory Sanctions:
I. If probation is not granted: 1st off-**$400/7 dys**[1]; 2nd off (w/n 12 yrs)-**$500/30 dys**[1]; 3rd off (w/n 12 yrs)-**$600/90 dys**[1]; 4th or sub. off (w/n 12 yrs)-**None** (See Footnote No. 1 on p. 3-293.) §§28-106 and 60-6,197(4)
II. If probation is granted: 1st off-**$400**; 2nd off (w/n 12 yrs)-**$500/48 hrs**[1]; 3rd off (w/n 12 yrs)-**$600/7 dys**[1]; 4th or sub off (w/n 12 yrs)-**$1,000/7 dys**[1] §§28-106 and 60-6,197(4) See the Comment on p. 3-293.

Administrative Licensing Action (Susp/Rev):

I. The following revocations are mandatory if probation is not granted:[3] 1st off-**Rev 6 mos**; 2nd off-**Rev 1 yr**; 3rd and sub. off-**Rev 15 yrs**[2] §§28-106 & 60-6,197
II. If probation is granted, the following mandatory revocations must be imposed:[3] 1st off-**Rev 60 dys**; 2nd off-**Rev 6 mos**; 3rd and sub. off-**Rev 1 yr** As part of probation, the court may order to only operate motor vehicles that are equipped with an **ignition interlock** device.[4] §§28-106 & 60-6,197
III. Administrative action[4&5]: 1st and sub. refusals-**Rev 1 yr** (mand) A person is not eligible to operate a motor vehicle equipped with an **ignition interlock** device until this revocation period is completed. §60-6,206 & 247 NAC §026

[1]See Footnote No. 2 on p. 3-293 concerning whether minimum mandatory sentences must be served consecutively.
[2]Reduced to 7 yrs provided the person (1) has completed a chemical dependency program, (2) has not been convicted of either a DWI or implied consent offense, (3) has abstained from the excessive consumption of alcoholic beverages and (4) is not under suspension or revocation for any other reason. §60-6,209
[3]These revocations are based upon a conviction under §60-6,197. Revocations cannot run concurrently with jail sanctions.
[4]**Comment:** When a defendant is placed on probation, the law is not clear as to whether such person is eligible to operate a motor vehicle equipped with an "ignition interlock" device prior to the termination of the mandatory revocation period. The law, however, clearly provides that such use is prohibited when the licensing agency acts independently to revoke a driver's license for a refusal to submit to a chemical test.
[5]This action by the licensing agency is independent of any licensing action that may be taken by the courts. A person, who is subject to this administrative action, is not eligible for employment (hardship) driving privileges under §60-4,130.

Sanctions for Refusal to Take Implied Consent Chemical Test: (continued)

Other:	Persons Under 21 Years Old. A person under 21 yrs old, who refuses to submit to a chemical test to determine if they have BAC/BrAC ≥0.02 but <0.10, commits a Traffic Infraction. Sanctions: Jail-**None**; fine-1st off Not more than **$100**, 2nd off (w/n 1 yr) not more than **$200**, 3rd and sub off (w/n 1 yr) not more than **$300.** Admin. Action. For either a 1st or sub offense-**90 dys** license "impoundment" Restricted driving privileges for employment are available. §§60-672, 60-689, 60-6,211.02 & 60-6,211.03 The driver licensing record for this admin. action must be expunged after 120 dys. §60-6,211.06(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Comment below and Double Jeopardy on p. 3-294.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off (Cl W misd)-Not more than **60 dys**; 2nd off (w/n 12 yrs)(Cl W misd)Not more than **90 dys**; 3rd off (w/n 12 yrs)(Cl W misd)-Not more than **1 yr**; 4th and sub. offs (w/n 12 yrs)(Cl IV felony)-Not more than **5 yrs**[1] §§28-106 & 60-6,196 DWI w/serious bodily injury-Cl IV Felony-Not more than **5 yrs** §§28-105 & 60-6,198 Persons Under 21 Years Old (≥0.02 but <0.10)-**None**
Mandatory Minimum Term:	I. If probation is not granted: 1st off-**7 dys**[2]; 2nd off (w/n 12 yrs)-**30 dys**[2]; 3rd off (w/n 12 yrs)-**90 dys**[2]; 4th or sub. off (w/n 12 yrs)-**None**[1] §§28-106 and 60-6,196(2) II. If probation is granted: 1st off-**None**; 2nd off (w/n 12 yrs)-**48 hrs**[2]; 3rd or sub. off (w/n 12 yrs)-**7 dys**[2] §§28-106 & 60-6,196(2) DWI w/serious bodily injury-**None**
Fine:	
Amount ($ Range):	1st off-**$500**; 2nd off (w/n 12 yrs)-**$500**; 3rd off (w/n 12 yrs)-**$600**; 4th and subsequent offs (w/n 12 yrs)-**$10,000**; DWI w/serious bodily injury-Cl IV Felony-Not more than **$10,000** §§28-105 & 60-6,198 Persons Under 21 Years Old (≥0.02 but <0.10)-1st off-Not more than **$100**, 2nd off (w/n 1 yr)-Not more than **$200**, 3rd and sub. off (w/n 1 yr)-Not more than **$300** §60-689

[1]The minimum imprisonment term for a Cl IV felony has been repealed. §1 of Legislative Bill 1266 enacted in 1998.
[2]If an offender is not placed on probation, the mand. min. period of incarceration would be "straight" or consecutive jail time. There is no statutory authority for the court to order "intermittent incarceration". However, if the offender is placed on probation, the court does have the statutory authority to grant such intermittent sentence. Thus, the minimum mandatory sentence under probation may not have to be served consecutively. *State v. Salyers,* 480 N.W.2d 173 (Neb. 1992), *State v. Peters,* 435 N.W.2d 675 (Neb. 1989), & *State v. Texel,* 433 N.W.2d 541 (Neb. 1989)

Comment: The court does not have to exercise its discretion to suspend a sentence and grant probation in either DWI or implied consent refusal criminal cases. If the court does not exercise this discretion, it must impose the minimum mandatory sanctions in §28-106. Of course, if this discretion is exercised, §28-106 mandatory sanctions do not have to be imposed. However, the court is required to impose the minimum mandatory sanctions associated with the granting of probation in §§60-6,196 & 60-6,197. *State v. Soe,* 366 N.W.2d 439 (Neb. 1985), *State v. Schulz,* 378 N.W. 165 (Neb. 1985), & *State v. Stastny,* 395 N.W.2d 492 (Neb. 1986)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Min. Fine ($):	I. If probation is not granted: 1st off-**$400**; 2nd off (w/n 12 yrs)-**$500**; 3rd off (w/n 12 yrs)-**$600**; 4th or sub. off (w/n 12 yrs)-**None** §§28-106 and 60-6,196 II. If probation is granted: 1st off-**$400**; 2nd off-**$500**; 3rd off-**$600**; 4th or sub off-**$1,000** §§28-106 & 60-6,196(2) DWI w/serious bodily injury-**None**
Other Penalties:	
Community Service:	**Yes** A criminal law violator may be sentence to perform community service. However, community service cannot be used either as a substitute for mand jail or fine or in cases where there is serious bodily injury. §29-2278 See §29-2279 for the length of community service.
Restitution (eg Victim's Fund)	I. A defendant may be ordered to pay restitution to a victim. §29-2280 II. Victims' compensation fund §81-1801 et seq.
Other:	**Driver Education Program.** Persons must attend and successfully complete a driver's education program of at least 8 hrs duration. §60-4,183 **Ignition Interlock.** A DWI offender, who has been placed on probation, may be ordered to only operate motor vehicles that are equipped with "ignition interlock" devices. §60-6,211.05
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy below.
Administrative Per Se Law:	**Yes** ≥**0.10** (BAC/BrAC See Footnote No. 2 on p. 3-291.) §§60-6,205 & 60-6,206 1st violation-Rev **90 dys** (30 dys mand[1]) A person is eligible for employment (hardship) driving privileges after the 30 dy mand period (but not for the operation of a CMV). Sub. violation (w/n 12 yrs)-Rev **1 yr**[1] (mand) 247 NAC §026[2] If DWI charges are not filed or if the driver is found not guilty of such charges, the admin. per se proceeding is either dismissed or if the proceeding has resulted in revocation, the revocation is cancelled and the license is reinstated. §60-6,206(4)
Other:	**None**

[1]Following the 30 dy mand rev period, either employment driving privileges may be granted or driving privileges may be granted with the condition that the offender only operate motor vehicles that are equipped with an "ignition interlock" device. For subsequent violators, the entire 1 yr revocation period is mandatory. §60-6,206(2)
[2]Regulation 247 NAC §026 also provides that a person is ineligible for a restricted (hardship) license if they are a subsequent violator.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Hansen,* 542 N.W.2d 424 (Neb. 1996), & *State v. Young,* 530 N.W.2d 269 (Neb.App. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	**Rev**[1&2] §§60-424 & 60-6,196 Persons Under 21 Years Old **≥0.02 but <0.10-Impoundment** §60-6,211.02(3)
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**6 mos**; 2nd off (w/n 12 yrs)-**1 yr**; 3rd & sub. off (w/n 12 yrs)-**15 yrs**[3] §60-6,196 DWI w/serious bodily injury-Cl. IV Felony-**15 yrs** §60-6,198(1) Persons Under 21 Years Old **≥0.02 but <0.10-30 dys**[4] (Driving privileges are available for employment.) §§60-6,211.02(3) & 60-6,211.03(2)
Mandatory Minimum Term of Withdrawal:	If probation is not granted: 1st off-**6 mos**; 2nd off (w/n 12 yrs)-**1 yr**; 3rd & sub. off (w/n 12 yrs)-**7 yrs**[3] §60-6,196 If probation is granted: 1st off-**60 dys**; 2nd off (w/n 12 yrs)-**6 mos**; 3rd & sub. off (w/n 12 yrs)-**1 yr** §60-6,196 & *State v. Matthews,* 465 N.W.2d 763 (Neb. 1991) As part of probation, the court may order a person to only operate motor vehicles that are equipped with an **ignition interlock** device. §60-6,196 However, see the Comment below for possible exemptions. DWI w/serious bodily injury-Cl. IV Felony-**60 dys** §60-6,198(1) **Special Note:** Any period of rev. imposed for DWI off. conviction shall be reduced by any rev. period imposed for an admin. per se action. §60-6,196(5)

[1]License revocation under the point system: 1st & 2nd DWI off-6 points; 3rd DWI off-12 points. Twelve (12) or more points w/n a 2 yr period from all traffic offenses requires revocation for at least 6 mos (or longer as the court may direct). A person is eligible for employment or medical hardship driving privileges for the entire rev. period. §§60-4,129, 60-4,182 & 60-4,183
[2]Revocations cannot run concurrently with jail sanctions.
[3]Reduced to 7 yrs provided the person (1) has completed a chemical dependency program, (2) has not been convicted of either a DWI or implied consent offense, (3) has abstained from the excessive consumption of alcoholic beverages and (4) is not under suspension or revocation for other reasons. §60-6,209
[4]The driver licensing record for this offense must be expunged after 90 dys. §22(1) of Legislative Bill 309 enacted in 1998.

Comment: Secs. 60-6,196(5) & 60-6,206(2) appear to give certain persons, who have been convicted of two or more DWI offenses, a chance to obtain employment (hardship) driving privileges. These sections provide that a person, who is a 1st admin. per se law violator, is eligible for an employment driving permit after a 30 day revocation period. This privilege appears to be available to a 1st admin. per se law violator notwithstanding the fact that they may have been convicted of a 2nd or subsequent DWI offense. Read carefully the language in the second sentence of §60-6,196(5). Such convictions would normally subject a person to mand lic rev periods far longer than 30 days.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 100 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§60-4,138, 60-4,163, 60-4,164 & 60-4,168 **Historical Note:** The law requiring CDL operators to submit to a urine test for alcohol concentration via implied consent was repealed. §60-4,164(1) as amended by §6 of Legislative Bill 323 enacted in 1996

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	
Rehabilitation:	
Alcohol Education:	**Yes** In addition to any other sanction, a DWI offender may be required to attend an alcoholism or drug treatment program as a condition of probation. §60-6,196(8)
Alcohol Treatment:	**Yes** See Alcohol Education on p. 3-295.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** (1) Cl I Misd (unintentional death caused while operating a motor veh in violation of law except as noted); (2) Cl IV Felony (if homicide was the result of DWI, reckless driving or willful reckless driving); (3) Cl III Felony (death as a result of DWI where the defendant has had a prior DWI offense conviction) §§28-105, 28-106, & 28-306
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Cl I Misd-not more than **1 yr**; Cl IV Felony-not more than **5 yrs**; Cl III Felony-not more than **20 yrs**
Mandatory Minimum Term:	Cl III Felony-**1 yr**
Fine ($ Range):	Cl I Misd-not more than **$1,000**; Cl IV Felony-not more than **$10,000;** Cl III Felony-not more than **$25,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Cl I Misd-**Rev**[1]; Cl IV Felony-**Rev**; Cl III Felony-**Rev** (A person must also attend and successfully complete a driver's education course of at least 8 hrs duration. §60-4,183) §§28-306(3)(b) & (c), 60-424, 60-4,182 and 60-4,183
Length of Term of Licensing Withdrawal:	(1) Cl I Misd Offense-**6 mos** from the date of revocation or after the date of release from confinement whichever is later.[1] (2) Cl IV Felony Offense-**15 yrs** The rev. shall not run concurrently with any jail term. (3) Cl III Felony Offense-**60 dys to 15 yrs** The rev. shall not run concurrently with any jail term.

[1]This revocation period is via the point system. A vehicle homicide offense results in an assessment of 12 points. An accumulation of 12 or more points w/n a 2 yr period results in a 6 mo. revocation. §§60-4,182 & 60-4,183

Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum Length of License Withdrawal:	(1) Cl I Misd Offense-**None** An employment driving permit may be issued. §§60-4,129 & 60-4,183 (2) Cl IV Felony Offense-**60 dys** and the rev. shall not run concurrently with any jail term. §28-306(3)(b) (3) Cl III Felony Offense-**60 dys** and the rev. shall not run concurrently with any jail term. §28-306(3)(c)
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	1st & sub. offs-Cl III Misd-Not more than **3 mos** See Footnote Nos. 1 & 2. §§28-106 & 60-4,108
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	1st & sub. offs-Cl III Misd-Not more than **$500** §28-106 See Footnote Nos. 1 & 2.
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	1st & sub offs-Driver ordered not to operate a vehicle §60-4,108 **Special Note:** Under §60-4,110, a motor vehicle, operated by any person whose license has either been revoked or suspended for any drunk driving or any implied consent conviction, must be impounded for not less than 10 nor more than 30 dys.
Length of Term of License Withdrawal Action:	1st off-**1 yr**[3]; sub. off-**2 yrs**[3] §60-4,108
Mandatory Term of License Withdrawal Action:	1st off-**1 yr**[3]; sub. off-**2 yrs**[3] §60-4,108

[1]A person commits a felony if they operate a motor vehicle while their license is revoked if the basis for the revocation was three or more DWI/implied consent offense convictions. 1st offense (Cl IV felony)-Imprisonment for not more than 5 yrs and/or a fine-not more than $10,000. Subsequent offense (Cl III felony)-Imprisonment for not more than 20 yrs (1 yr minimum) and/or a fine-not more than $25,000. §§28-105, 60-6,196(6) & 60-197(7)

[2]Sanctions for driving while revoked under the point system. Criminal sanctions-Class III Misd: Jail-not more than 3 mos; fine-not more than $500. Admin. Actions: (1) The license revocation as given under the point system must remain in effect for 1 yr. (2) However, if the license revocation as given under the point system was a person's second revocation under such system w/n a 5 year period, such revocation must remain in effect for 3 years. These revocation periods are not mandatory. A person is eligible for employment driving privileges. §§28-106, 60-4,129 & 60-4,186

[3]Licensing action is not to run concurrently with any term of imprisonment. §60-4,108

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: It is a Cl III misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 3 mos and/or a fine of not more than $500. §§28-106 & 60-4,141.01 If a person is convicted of violating an out-of-service order, they are subject to the following disqualification periods: 1st offense-90 dys (mand); 2nd offense (w/n 10 yrs)-1 yr (mand); and, 3rd or sub offense (w/n 10 yrs)-3 yrs (mand). If the CMV operator was driving a CDL either containing hazardous materials or designed to carry 15 or more persons, the CDL disqualification periods are as follows: 1st offense-180 dys (mand); and, sub offense (w/n 10 yrs)-3 yrs (mand). §5 of Legislative Bill 323 enacted in 1996

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**Yes** §60-6,102
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** If dead within 4 hrs of the accident.
Vehicle Passenger:	**No**
Pedestrian:	**Yes** If at least 16 yrs old and died within 4 hrs of the accident.

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1985) §§53-103(23), 53-180 & 53-180.01
Minimum Age (Years) Possession:	**21** There are exemptions for possession in a "permanent place of residence" and for certain employment purposes by those ≥ 19 yrs old. §§53-103(23), 53-168.06 & 53-180.02
Minimum Age (Years) Consumption:	**None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** Note: For cases denying liability, see *Holmes v. Circo,* 244 N.W.2d 65 (1976), *Arant v. G.H., Inc.,* 428 N.W.2d 631 (Neb. 1988), and *Schroer v. Synowiecke,* 435 N.W.2d. 875 (Neb. 1989).

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:	**No** (No Cases)
Other:	A licensee cannot be held liable for injuries sustained by an intoxicated minor patron. *Pelzek v. American Legion,* 463 N.W.2d 321 (Neb. 1990)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Cl I Misd** §§53-180, 53-180.05 & 28-106
Term of Imprisonment:	Not more than **1 yr**
Fine ($ Range):	Not more than **$1,000**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev**[1] §§53-116.2, 53-128 & 53-1,104
Length of Term of License Withdrawal:	Not specified in the statute.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Cl I Misd** §§53-180, 53-180.05 & 28-106
Term of Imprisonment:	Not more than **1 yr**
Fine ($ Range):	Not more than **$1,000**
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev**[1] §§53-116.2, 53-128 & 53-1,104
Length of Term License Withdrawal:	Not specified in the statute.
Anti-Happy Hour Laws/Regulations:	**Yes** Regulation 237-6.019.01U This regulation does not regulate the price of "single" drinks. It does, however, prohibit the selling of an unlimited quantity of drinks at one price or two or more drinks at the same price.

[1]In lieu of a suspension, the licensee may pay a "cash penalty" for each day of the suspension. For a 1st offense, the "cash penalty" is $50 per day and for a 2nd or subsequent offense (w/n 4 yrs), the "cash penalty" is $100 per day. §53-140.01

Other State Laws Related To Alcohol Use: (continued)

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §53-186 The consumption of alcoholic liquors inside vehs on public roadways is unlawful "unless authorized" by the State or local government having jurisdiction over the particular public roadway where the consumption is to take place.

STATE:	**NEVADA**
General Reference:	Nevada Revised Statutes Nevada Administrative Code (NAC)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §484.379(1)(a)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1&2] §§484.0135 & 484.379(1)(b) & (c)
Presumption (BAC):	**None** Presumption law, §484.381, repealed. §3 Ch. 249 (1993)
Types of Drugs/Drugs and Alcohol:	I. Under the influence of (1) **A Controlled Substance** or (2) a Combination of Intoxicating Liquor and a Controlled Substance §484.379(2) II. Any Person Who Inhales, Ingests, Applies or Otherwise Uses any Chemical, Poison, Organic Solvent and Any Compound or a Combination of These to a Degree which Renders Him Incapable of Safely Driving. §484.379(2)
Other:	For Commercial Motor Vehicle Operators, see below. For Taxicab Drivers, see p. 3-306.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes**[3] §484.382
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[3] §484.383(1)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §484.383(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §484.389
Other Information:	If a person fails to submit to a test, a blood sample may be obtained without consent (i.e., via force) if there is "reasonable grounds to believe" that the driver has been driving under the influence of alcohol or a controlled substance.[4] §484.383(7)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more. §484.0135

[2]Standards: Percent by wgt. of alcohol in the blood which is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §484.0135

[3]A law enforcement officer only needs "reasonable grounds to believe" that a drunk driving offense was committed before they can request a driver to submit to blood, breath or urine tests under the implied consent law. This same standard also applies to requests concerning preliminary breath tests.

[4]See Footnote No. 1 on p. 3-302.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): The State's Public Service Commission and Department of Motor Vehicles and Public Safety have promulgated regulations that adopt by reference 49 CFR Parts 383 and 392. Under 49 CFR §383.51, a person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 or (2) are under the influence of alcohol or a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). Note: If there is "reasonable grounds to believe" that a CMV operator is under the influence of intoxicating liquor or a controlled substance, a law enforcement officer must administer either a blood, breath or urine test to such driver in order to determine either the alcoholic content or the presence of a controlled substance in the operator's system. **Comment:** It would appear that the law allows law enforcement officers to obtain samples of bodily substances (e.g, of blood) for testing via "force". Under 49 CFR §392.5, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. It is misdemeanor to violate a State regulation. The sanctions for this offense are a jail term of not more than 6 mos and/or a fine of at least $100 (mand) but not more than $1,000. In addition, a person, who violates a State regulation, may also be liable for a civil penalty which is not to exceed $10,000. §§483.904, 483.908, 483.922, 706.173, 706.756 & 706.771, NAC §706.247 and 49 USC 31301 et seq.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes**[1] §484.383(1)
Urine:	**Yes-Limited**[2] §484.383(1)
Other:	Or other unspecified bodily substances §484.383(1)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Yes** Note: A DWI charge cannot be exchanged for a lesser charge unless there is no evidence to support such a DWI charge. §484.3792(3)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** I. An alcohol or drug evaluation must be administered to 3rd or sub. offenders and to offenders who have caused either an injury or death. §§176.135, 484.3792(1)(c) & 484.3796 II. Either a 1st offender, who registers a BAC/BrAC ≥0.18, or any 2nd offender (w/n 7 yrs) must be administered an evaluation to determine if they are an abuser of alcohol or drugs. §484.37943(1) III. A 1st offender, who is <21 yrs old, or a 1st or sub offender, who is <18 yrs old, must be administered an evaluation to determine if they are an abuser of alcohol or drugs. §§62.020(1), 62.2275(1) & 484.37943(2) IV. The above offenders must be examined by individuals who have been certified or approved to make alcohol and drug evaluations. The finding of this evaluation must be reported to the court. §484.37943(1)(a)(3)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**[3]
Other:	If a person refuses to submit to a preliminary breath test where there is "reasonable grounds to believe" that they have committed a drunk driving offense, the law enforcement officer requesting such a test must seize the person's license and arrest them for such offense. §484.382(2)

[1]A person may be directed to submit to blood test for controlled substances. §484.383(5) In addition, a law enforcement officer may "direct" a person to submit to blood test if there is "reasonable grounds to believe" the person, while operating a vehicle, either (1) caused either death or serious injury while under the influence intoxicating liquore or a controlled substance or (2) has been stopped for a subsequent drunk driving offense w/n 7 yrs. §484.383(4)(c)

[2]A urine test can only be requested under two conditions. (1) A driver has been arrested for an alcohol driving offense and it is determined that they have hemophilia or a heart condition which would exempt them from a blood test or (2) a driver has been stopped for driving under the influence of a controlled substance. §484.383(3), (5) & (6)

[3]**Historical Note:** The administrative licensing sanction (i.e, a 90 dy revocation) for a refusal to submit to a preliminary breath test was repealed. Sec. 484.384 as amended by §4 of Chapter 546, Laws of 1995

Sanctions for Refusal to Submit to a Chemical Test: (continued)

Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None** See the Historical Note below.
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy on p. 3-303.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st & 2nd DWI offs are misds; 3rd DWI or sub offs are Category B felonies §§193.120 & 484.3792 **Special Note:** If there is substantial bodily harm related to a DWI offense, the sanctions imposed are the same as for DWI vehicle homicide. §484.3795 See Homicide by Vehicle on p. 3-306. 1st off-**2 dys to 6 mos**; 2nd off (w/n 7 yrs)-**10 dys to 6 mos** (or residential confinement in a treatment facility-**10 dys to 6 mos**); 3rd and subsequent off (w/n 7 yrs)-**1 to 6 yrs** (State prision) §§484.379 & 484.3792
Mandatory Minimum Term:	1st off- **2 dys** Important: See the Special Note below. 2nd off (w/n 7 yrs) **-10 dys** (with at least 48 con hrs §484.3792(4)) Important: See the Special Note below. 3rd and subsequent off (w/n 7 yrs)-**1 yr** (with at least 48 con hrs §484.3792(4))
Fine:	
Amount ($ Range):	1st off-**$200 to $1,000**; 2nd off (w/n 7 yrs)-**$500 to $1,000**; 3rd and subsequent off (w/n 7 yrs)-**$2,000 to $5,000** **Special Note:** 1st off and 2nd off (w/n 7 yrs)-If rehabilitation is taken, the fine can be no more than the minimum fine indicated.
Mandatory Min. Fine ($):	1st off-**$200**; 2nd off-**$500**; 3rd and sub. off-**$2,000** §§484.3792(3) & 484.3974(4)(c)(3)
Other Penalties:	
Community Service:	1st off-**96 hrs** (alternative to imprisonment) or, if rehabilitation is taken, **48 hrs** §§484.3792(1)(a)(2) & 484.3794(1)(c)(1) 2nd off (w/n 7 yrs)-Unless extenuating circumstances exist, **100 (mand) to 200 hrs** (in addition to imprisonment) or, if rehabilitation is taken, **50 (mand) to 100 hrs** §§484.3792(1)(b)(3) & 484.3794(1)(c)(2) Important: See the Special Note below.

Special Note: Either a 1st or 2nd offender (w/n 7 yrs), who has been classified as an alcohol/drug abuser, may have their sentence suspended if they agree to participate in an alcohol or drug treatment program. A 1st offender must be placed in this program for 6 mos and must serve 1 dy in jail or perform 48 hrs of community service. A 2nd offender (w/n 7 yrs) must be placed in the program for 1 yr and must serve 5 dys in jail and perform not less than 50 (mand) nor more than 100 hrs of community service. In addition, offenders must agree to pay any treatment program costs. A person is not eligible for this program if they have been convicted of a drunk driving offense related either to injury or death. §§484.37937 & 484.3794

Historical Note: The administrative licensing sanctions for a refusal to submit test under the implied consent law (i.e., 1st refusal-rev 1 yr (mand); 2nd or sub refusal (w/n 7 yrs)-rev 3 yrs (mand)) were repealed. §§484.384 & 484.385 as amended by §§4 & 5 of Chapter 546, Laws of 1995

Sanctions Following a Conviction for a DWI Offense:
(continued)

Community Service: (continued)	Offenders < 18 yrs old may be required to perform community service. §62.2275(3)(c)(2)
Restitution (eg Victim's Fund)	**Yes** (1) As a condition for a suspended sentence, the court may order a defendant to pay compensation to a victim §§4.373 & 5.055 and (2) via a victims' compensation fund §217.010 et seq.
Other:	**Residential Confinement**. The court may order that the defendant be confined to his/her home for a conviction of a misd. off. This sentence may be supervised by means of electronic devices. §§4.430, 4.440, 5.053 & 5.054 A **Civil Fine** of **$35** must be imposed. This fine is paid into a victims' compensation fund. §484.3791 **Chemical Test Fee.** In addition to any fine, a defendant must pay a fee of **$60** for any chemical analysis that was performed to determine alcohol concentration or the presence of a controlled substance in the blood, breath or urine. §484.3798 **Administrative Assessment.** DWI misdemeanor offenders are subject to administrative assessments in addition to any fine this is imposed. These assessments may range from **$10 to $100** depending upon the size of the fine that is imposed. §176.059(1) **Evaluation Assessment Fee.** An offender, who has been ordered to submit to alcohol or drug evaluation, must pay a fee of not more than **$100**. §484.37943(6) **Impact Meeting.** An offender shall be ordered to attend a meeting (if available) with victims of DWI offenses in order to discuss the impact of the offense on such victims. §484.3797
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy below. See the Special Note on p. 3-305.
Administrative Per Se Law:	**Yes** ≥**0.10** (BAC/BrAC[1&2] See Footnote No. 2 on p. 3-301.) **Rev 90 dys** (mand) §§484.0135, 484.383, 484.384 & 484.385 Persons Under 21 Years Old-≥**0.02 but <0.10** (BAC/BrAC)[3] **Susp 90 dys** (45 dys mand A restricted license may be issued after this mand period.) §§483.461, 483.462 & 483.464
Other:	Under §§483.473(1)(a) & 483.490(1), a person's license may be susp for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

[1]An admin. per se licensing action can be based either on the result of an implied consent test or a preliminary breath test. §484.384(1)
[2]**Comment:** Sec. 484.385 appears to authorize admin. licensing action against a person who operates a motor vehicle with any amount of a controlled substance in their body for which a valid prescription has not been issued. However, this provision conflicts with §484.384(1) which only provides for a 90 dy susp if the driver has a BAC/BrAC ≥0.10.
[3]Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §483.025

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Lomas,* 955 P.2d 678 (Nev. 1998)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:	See the Special Note below.
Type of Licensing Action (Susp/Rev):	1st off-**Rev**; 2nd off (w/n 7 yrs)-**Rev**; 3rd and subsequent offs (w/n 7 yrs)-**Rev** §483.460. See Footnote No. 1.
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**90 dys**[2]; 2nd off (w/n 7 yrs)-**1 yr**; 3rd and subsequent off (w/n 7 yrs)-**3 yrs**[2] (For a 3rd or subsequent offense, the license revocation period does not "run" while the offender is under jail or residential confinement.) §483.460
Mandatory Minimum Term of Withdrawal:	1st off-**45 dys**[2]; 2nd off (w/n 7 yrs)-**1 yr** (After a 90 dy mand rev a restricted license may be issued if the person is allowed to use an ignition interlock.); 3rd and subsequent offs (w/n 7 yrs)-**1 1/2 yrs**[2] (After a 180 dy mand rev a restricted license may be issued if the person is allowed to use an ignition interlock.) §§483.460(1)(b)(5) & 483.490(2) **Ignition Interlock**. The court may require a defendant to install an "ignition interlock" device on their vehicle. The court can require a defendant to install this device either as a condition to suspend a sentence or to reinstate a license. §§484.3941 and 484.3943(1) & (2) If the court orders the use of such device, it must be installed and used for the following periods: 1st offense-**3 to 6 mos**; 2nd offense-**6 to 12 mos**; and, 3rd and subsequent off-**12 to 36 mos**. §484.3943(1)
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** A temporary alcohol education program may be established. §5 of Ch. 583 of the laws of 1987
Alcohol Treatment:	**Yes**[1] For 1st[2] & 2nd non-death/non-injury related offs[3] §§209.425 et seq. & 484.3794 Important: See the Special Note on p. 3-303.

[1]**Persons Under 18 Years Old:** I. Under separate provisions of law, a drunk driving offender, who is under 18 yrs old, is subject to a license revocation of 90 dys. However, this licensing action is not mandatory. A restricted license is available either (1) for either going to and from or for use during employment or (2) for medical care. §§62.227 & 483.490 II. Under general provisions of the law governing juvenile offenders (offenders < 18 yrs old), a court has the authority to suspended such a person's license for 90 dys to 2 yrs as a sanction for most criminal acts. Restricted driving privileges are available either (1) for going to and from employment or (2) for use during employment. §§62.020(1), 62.040, 62.211(1)(h) & 483.490(2) II. Such an offender must compete an alcohol/drug treatment program if a alcohol/drug evaluation indicates that such treatment is needed. §62.2275

[2]After half of the rev period has passed and the DWI offender has completed treatment a treatment program, a restricted license may be issued. §§483.460(3) & 483.490(2) For a 1st offender, after 45 dys a restricted license may be issued if they have been allowed to participate in the ignition interlock program. §483.490(2)

[3]An offender may be placed under "clinical supervision" for not less than 30 dys but no more than 6 mos. Such "supervision" may or may not include confinement in a treatment facility. §484.37945

Special Note: If a license rev for a DWI off conviction follows one for an admin. per se action, the admin. per se rev is cancelled. The driver shall be given credit towards any DWI off conviction rev period for any time he/she was not eligible for a license under the admin. per se rev. Also, following the cancellation of the administrative per se rev, the legal provisions, concerning min. mandatory terms of license withdrawal and issuance of restricted licenses after a DWI off conviction, would apply.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Alcohol Treatment: (continued)	Note: Under §209.425, an alcohol treatment program is available for incarcerated DWI offenders. Persons <18 yrs old may also be required to participate in a treatment program. §62.2275(3)(c)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**Child Endangerment.** If a child less than 15 yrs old was a passenger in the vehicle at the time of the offense, such fact shall be considered an aggravating factor when determining sentence. §484.3792(7)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** (1) Death caused by reckless driving where there is wanton disregard for the safety of others-Category B felony and (2) death caused by a DWI[1] off-Category B felony §§484.377 & 484.3795
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**1 to 6 yrs**-Reckless driving; **2 to 20 yrs**[2]-DWI related offs.[3] §§484.377 & 484.3795
Mandatory Minimum Term:	For a DWI related death-**2 yrs**[2&4]
Fine ($ Range):	Not more than **$5,000**-reckless driving; **$2,000 to $5,000**[2]-DWI related offs.
Mandatory Minimum Fine:	For a DWI related death-**$2,000**[2&4]

[1]The sanctions for this offense also apply to DWI injury related offenses. §484.3795
[2]This sanction also applies to a person who causes substantial bodily harm as a result of a DWI offense. §484.3795(1)
[3]For DWI related vehicle homicide, the prosecuting attorney may not dismiss that charge unless such charge cannot either be supported by probable cause or proved at the time of trial. §484.3795(2)
[4]This minimum sanction may not be suspended nor may probation be granted. §484.3795(2)

Taxicab Drivers: It is illegal for a person to "drive a taxicab or go on duty while under the influence of , or impaired by, any controlled substance, dangerous drug, or intoxicating liquor or drinking liquor while on duty." §706.8849(1)(g) A person, who violates this provision, is subject to the following sanctions: 1st offense-A fine of not more than **$100** and/or driver's license suspension from 1 to 5 dys; 2nd offense-A fine of not more than **$300** and/or driver's license suspension from 6 to 20 dys; and, 3rd offense-A fine of not more than **$500**. In addition to these sanctions, a driver's license may be revoked. §706.8849(2) Note: The law does not state a revocation period.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §483.460 (Applies to either reckless driving or DWI related deaths.) See Ignition Interlock below. For offenders < 18 yrs old, see II under Footnote No. 1 on p. 3-305.
Length of Term of Licensing Withdrawal:	For a DWI related death, **3 yrs** The license revocation period does not "run" while the offender is under jail or residential confinement. §483.460(1)(a)(3) Note: For any non-alcohol related death or other manslaughter off. not noted above caused by veh operations, the driver's license is revoked for **1 yr.** §483.460(1)(b)(1)
Mandatory Action--Minimum Length of License Withdrawal:	**1½ yrs** (Death related DWI offs.); **6 mos** (Non-alcohol related death offs.) §§483.460(1) and 483.490(1) & (2)
Other:	1) A person, who has been convicted of DWI related vehicle homicide, may be required to serve a ten (10) period of probation. §484.3795(3)(b) 2) A person must be evaluated for an alcohol or drug abuse problem. If a person has such a problem, they are assigned to a treatment program. §§484.3796 & 209.425 et seq.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd 30 dys to 6 mos**[1&2] §483.560(2)
Mandatory Minimum Term of Imprisonment:	**30 dys**[1,2&3]
Fine ($ Range):	**$500 to $1,000**[1&2]
Mandatory Minimum Fine:	**$500**[1&2]

[1]These sanctions do not apply if a person operates a motor vehicle after the suspension or revocation has expired but before they have their license reinstated.
[2]**Alternative Sanctions:** Residential confinement from 60 dys (mand) to not more than 6 mos and a fine of $500 (mand) to not more than $1,000. §483.560(2)
[3]Under §483.560(3), any segment of imprisonment must consist of at least 24 hrs.

Special Note: The CMV law prohibits the operation of a CMV during either a CDL disqualification or a CDL out-of-service order. However, this law does not appear to provide specified sanctions for this prohibition. §483.924(2) It is not clear whether the law that prohibits the illegal use of a license applies. If it does, the following sanctions could be imposed: Imprisonment for not more than 6 mos and/or a fine of not more than $1,000. Community service may be imposed in lieu of these sanctions. §§193.150, 483.530(7) & 483.620

Ignition Interlock. A person, who has been convicted of an offense under §484.3795 may be required by the court to install and use an ignition interlock as a condition for either restricted driving privileges or for license reinstatement. The offender must install and use this device for 12 to 36 mos. An offender, who is ordered to install and use an ignition interlock device, is eligible for restricted driving privileges after 180 dy revocation period. §§483.490(2), 484.3941 & 484.3943(1)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	For driving on a suspended license-**Susp** For driving on a revoked license-**Rev** §483.560(5) For persons < 18 yrs old, see II under Footnote No. 1 on p. 3-305.
Length of Term of License Withdrawal Action:	The original susp period extended a like period The original rev extended 1 yr §483.560(5)
Mandatory Term of License Withdrawal Action:	See above. Note: The restricted license provisions of §483.490(2) may apply. See Footnote No. 2 on p. 3-305.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §484.394
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**Yes**
Pedestrian:	**Yes**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1933) §§202.020 & 202.055
Minimum Age (Years) Possession:	**21** Applies only to possession in a public place. §202.020 Minimum Age (Years) Consumption:**21** Applies to any place where alcoholic beverages are sold. §202.020

Other State Laws Related To Alcohol: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No** §41.1305[1]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** Note: For cases denying liability, see *Hamm v. Carson City Nugget,* 450 P.2d 358 (Nev. 1969), *Yoscovitch v. Wasson,* 645 P.2d 975 (Nev. 1982), and *Hinegardner v. Marcor Resorts,* 844 P.2d 800 (Nev. 1992).
Dram Shop Actions-Social Hosts:	**No**[1&2]
Other:	A minor decedent's estate has no cause of action in negligence against a licensee who served alcoholic beverages to the minor even though the consumption of such beverages was a factor in the minor's death. *Snyder v. Viani,* 885 P.2d 610 (Nev. 1994)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**No Comment:** The State grants local governments broad power to license and regulate liquor retail establishments. Therefore, local laws may have been enacted to control the sale of alcoholic beverages to intoxicated persons.
Term of Imprisonment:	**N/A**
Fine ($ Range):	**N/A**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**N/A**
Length of Term of License Withdrawal:	**N/A**
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** §§193.150 & 202.055
Term of Imprisonment:	Not more than **6 mos**[3]
Fine ($ Range):	Not more than **$1,000**[3]

[1]The law provides that, persons, who serve or sell alcoholic beverages, are not liable either (1) for the injures caused by the individuals, who consumed such beverages, or (2) for the injures sustained by such individuals. **Comment:** The law appears to apply to both alcoholic beverage licensees and social hosts.
[2]In *Bell v. Alpha Tau Omega Fraternity,* 642 P.2d 161 (Nev. 1982), the court held that there was no social host liability in a situation where a minor guest was injured after consuming alcoholic beverages at a party given by the host.
[3]A person may be allowed to perform community service in lieu of all or part of the jail/fine sentence. §193.150

Other State Laws Related To Alcohol: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Note: Controlled by local law.
Length of Term License Withdrawal:	Note: Controlled by local law.
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §484.448(2)
Anti-Consumption Law (Yes/No):	**Yes** Driver only §484.448(1) Note: The law states that "it is unlawful for any person to drink any intoxicating liquor in a motor veh while such person is driving such motor veh upon a highway."

STATE:	**NEW HAMPSHIRE**
General Reference:	New Hampshire Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor[1] §§265:82, I(a)
Illegal Per Se Law (BAC/BrAC):	≥**0.08**[2&3] §265:82, I(b) Persons Under 21 Years Old-≥**0.02**[3&4] §265:82, I(b)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Controlled Drug** and (2) any Combination of Intoxicating Liquor and Controlled Drugs §265:82(I)(a)
Other:	I. An alcohol concentration ≥**0.08**[3] is *prima facie* evidence of intoxication. §265:89 II. **Aggravated Driving While Intoxicated Offense.** (1) Either driving while under the influence of intoxicating liquor or any controlled drug or any combination of intoxicating liquor and a controlled drug or with a BAC/BrAC ≥0.08 and one of the following: Exceeding the *prima facie* speed limit by more than 30 MPH; causing a collision that results in a serious bodily injury to another person; or, attempting to elude a law enforcement officer. (2) Driving with a BAC/BrAC ≥0.16. §265:82-a III. For Commercial Motor Vehicle Operators, see p. 3-315.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §§215-A:11 & 265:92-a
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §265:84
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §265:84
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §265:88-a & *State v. Parker,* 902 A.2d 306 (N.H. 1997)
Other Information:	I. If there is probable cause of DWI, a driver, involved in a collision resulting in a death or serious injury, shall be tested for evidence of alcohol or controlled drugs. §265.93 II. Under the implied consent law (§265:84), in addition to chemical tests, a person is deemed to have consented to "physical tests and examinations". A person, who refuses to submit to these tests or examinations, is subject to the same licensing action as for a refusal to submit to a chemical test.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §265:84
Urine:	**Yes** §265:84
Other:	**None**

[1]The term "intoxicating liquor" is defined to include all alcohol beverages containing more than one per cent alcohol by volume. §21:33
[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or a urine alcohol concentration of 0.08 or more. §259:3-b
[3]The term "alcohol concentration" is defined as grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine. §259:3-b
[4]The sanctions for this offense (criminal and administrative) are the same as for any other drunk driving offense.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No** Note: The law requires the filing of reports on plea bargaining agreements. Since these reports are public records, they are available for public inspection. §265:82-c
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes (Limited)** 3rd and sub offs (w/n 7 yrs) §265:82-b, II(b)((2) Note: Under §651:4, a pre-sentence investigation is not normally required in misdemeanor cases.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal where there has been no previous DWI off-**Susp for 180 dys** (mand); 2nd refusal or a 1st refusal where there has been a previous DWI off-**Susp for 2 yrs** (mand) §§265:91-a, II(a) & 265:92 These revocations are not to run concurrently with any other suspension or revocation. §265:92, II
Other:	See Footnote No. 1.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off-Violation-No term of imprisonment; 1st off-**Aggravated Driving While Intoxicated Offense** (except bodily injury offenses) Misd[2]-Not more than **1 yr**; 2nd offs (all offenses including Aggravated DWI) (w/n 7 yrs)-Misd[2]-Not more than **1 yr**[3]; 3rd off (all offenses including Aggravated DWI) (w/n 7 yrs)-Misd[2]-Not more than **1 yr**[3]; 4th or sub offs (all offenses including Aggravated DWI))(w/n 7 yrs)-Misd[2]-Not more than **1 yr**; 3rd or sub offs (all offenses including Aggravated DWI) (w/n 7 yrs) where there was a prior motor vehicle related negligent homicide offense-Misd[1]-Not more than **1 yr**

[1]A person holding an "at risk" probationary license whom police have reasonable cause to believe is driving with a BAC/BrAC ≥0.03 and who refuses to take a chemical test shall have their license suspended for 90 days. §263:14-a(III). See Miscellaneous Sanctions on p. 3-316.

[2]The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

[3]For a 2nd or 3rd Aggravated DWI offense, a defendant may receive and extended term of imprisonment of from 2 to 5 yrs. §651:6(I)(l) & (m) and (II)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:	**Aggravated Driving While Intoxicated Offense with Serious Bodily Injury**-Cl B Felony-Not more than **7 yrs**[2] §§265:9, IV(A); 265:82; 265:82-a; 265:82-b, I(b) & II and 651:2, I(c) **Special Note:** In order for a defendant to receive enhanced sanctions for a subsequent DWI offense conviction, the DWI complaint must allege the prior convictions. §265:82-b, I(b)(1) 2nd and sub. off (all offenses including Aggravated (DWI)(w/n 7 yrs)-Misd-**10 cons dys** The 10 con dys are to be served as follows: 3 con 24 hour periods in the county house of corrections and 7 con 24 hour periods in a State operated 7-dy multiple DWI offender intervention detention center. Important. See **Special Sanctions for Certain Multiple Offenders** on p. 3-314. §265:82-b, II(a)(3), (b), (c) & (d) Aggravated DWI-Serious Bodily Injury-**None**
Fine: Amount ($ Range):	1st off-**$350 to $1,000**; 1st off-**Aggravated Driving While Intoxicated Offense** (except bodily injury offenses)-**$500 to $2,000**; 2nd off[3] (w/n 7 yrs)-**$500 to $2,000**; 3rd off[3] (w/n 7 yrs)-**$500 to $2,000**; 4th or sub offs[3] (w/n 7 yrs)-**$500 to $2,000**; 3rd or sub offs[3] (w/n 7 yrs) where there was a prior motor vehicle related negligent homicide offense-Misd-**$500 to $2,000 Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-$1,000 to $4,000** §§265:82-b, I & II and 651:2, VI(a)
Mandatory Min. Fine ($):	1st off-**$350**; 1st off-Aggravated DWI-**$500**; 2nd off[3] (w/n 7 yrs)-**$500**; 3rd off[3] (w/n 7 yrs)-**$500**; 4th or sub offs[3] (w/n 7 yrs)-**$500**; 3rd or sub offs[3] (w/n 7 yrs) where there was a prior motor vehicle related negligent homicide offense-**$500 Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-$1,000** §265:82-b, I & II
Other Penalties: Community Service:	**Yes** For a felony or class A misd, a defendant may receive conditional discharge which may include not more than 50 hrs of community service. §651:2, VI
Restitution (eg Victim's Fund)	I. Payment by the defendant to the victim.[4] §651:62 et seq. II. A victim may receive compensation for damages from a State fund. §21-M:8-g et seq.

[1]The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)
[2]For a 2nd or 3rd offense (Aggravated DWI-Serious Bodily Injury offense), a defendant may receive and extended term of imprisonment of from 10 to 30 yrs. §651:6(I)(l) & (m) and (II)
[3]All offenses including Aggravated DWI.
[4]The offender may be ordered to pay restitution to the victims' compensation fund. Such payments are used to reimburse the fund for any amounts that were awarded to victims of the offense. §21-M:8-l

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Assessments. There are two (2) special assessments (1) An assessment of either $2 or 10% of the fine imposed; this assessment is used to fund police training. And, (2) an assessment of 2% of the fine imposed. This assessment is used to fund local victim assistance programs. §188-F:31
Liability for Response. A DWI offender may be liable to reimburse a public agency for up to $10,000 (or up to 500 hrs of community service) of the cost incurred in responding to an incident involving the negligent use of a vehicle while under the influence of alcohol. §§151-B:17 & 151-B:22
Special Sanctions for Certain Multiple Offenders. Any person who has completed a multiple DWI offender intervention program and who is subsequently convicted of a DWI offense shall be imprisoned for 30 con. 24 hour periods. In addition, they must complete, at their own expense, either a 28 day residential treatment program or "an intensive course of substance abuse treatment" before their license can be restored. §265:82-b, II-a

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Yes ≥**0.08** BAC/BrAC/UrAC (≥0.02 for persons under 21 years old) See Footnote No. 3 on p. 3-311. 1st violation-Susp-**6 mos** (appears mand); sub. violation-Susp-**2 yrs** (appears mand) A subsequent admin. per se violation also includes a prior refusal or DWI offense. §265:91-a et seq.
Special Note: If a person is subject to both an admin. per se suspension and a license revocation based on a DWI conviction as a result of the same occurrence, the total license suspension/revocation time cannot exceed the longer of the two periods. §265:91-c

Other:

Under §§263:56(I)(a) & 263:56(III), a person's license may be susp/rev for not more than 1 yr if they have "committed" an off that requires mandatory license rev (e.g., DWI). A preliminary hearing is required before such action can be taken. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

1st off-**Rev**; 1st off-**Aggravated Driving While Intoxicated Offense** (except bodily injury offenses)-**Rev**; 2nd off[1] (w/n 7 yrs)-**Rev**; 3rd off[1] (w/n 7 yrs)-**Rev**; 4th or sub offs[1] (w/n 7 yrs)-**Rev**; 3rd or sub offs[1] (w/n 7 yrs) where there was a prior motor vehicle related negligent homicide offense-Rev
Aggravated Driving While Intoxicated Offenses with Serious Bodily Injury-Rev See Rehabilitation on p. 3-315. §§263:65, 263.66 & 265:82-b
See the Special Note above.

[1]All offenses including Aggravated DWI.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**90 dys to 2 yrs**; 1st off-**Aggravated Driving While Intoxicated Offense** (except bodily injury offenses)-**1 to 2 yrs**; 2nd off[1] (w/n 7 yrs)-Not less than **3 yrs**; 3rd off[1] (w/n 7 yrs)-For at least **5 yrs**; 4th or sub offs[1] (w/n 7 yrs)-**Indefinitely**; 3rd or sub offs[1] (w/n 7 yrs) where there was a prior motor vehicle related negligent homicide offense-Indefinitely **Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-1 to 2 yrs** See Footnotes Nos. 2 & 3.
Mandatory Minimum Term of Withdrawal:	1st off-**90 dys**; 1st off-**Aggravated Driving While Intoxicated Offense** (except bodily injury offenses)-**1 yr**; 2nd off[1] (w/n 7 yrs)-**3 yrs**; 3rd off[1] (w/n 7 yrs)-**5 yrs**; 4th or sub offs[1] (w/n 7 yrs)-**7 yrs**; 3rd or sub offs[1] (w/n 7 yrs) where there was a prior motor vehicle related negligent homicide offense-**10 yrs** **Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-1 yr** 265:82-b, II See Footnotes Nos. 1 & 2. **Child Endangerment.** If the DWI offender was transporting a person under 16 yrs old at the time of the offense, the offender must have their driving privileges revoked for the maximum time period provided by law.[4] §265:82-b, VIII
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** For any alcohol related driving off, a defendant must be complete an impaired driver intervention program before their license can be restored. §263:65a
Alcohol Treatment:	
Vehicle Impoundment/Confiscation:	**None**
Authorized by Specific Statutory Authority:	
Terms Upon Which Vehicle Will Be Released:	

[1]All offenses including Aggravated DWI.
[2]If a 2nd or subsequent offense (w/n 7 yrs) is not alleged in the complaint but such is found to be the case, the defendant's license is suspended from 180 dys to 3 yrs. The minimum 180 dys appears to be mandatory. §265:82-b, III
[3]A 2nd or subsequent offender (w/n 7 yrs) must successfully complete a 7 dy residential intervention program before their license can be reinstated. §336:4, VI
[4]Before an offender's license can be restored, they must complete either a 7 dy State operated multiple DWI offender program or a 7 dy alcohol and drug residential intervention program. §§172-B:2-b & 265:82-b, VIII

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is suspended for at least 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) are under the influence of alcohol with an alcohol concentration (BAC/BrAC/UrAC) ≥0.04 (See Footnote No. 3 on p. 3-311.) or (2) are under the influence of a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the suspension is for life (10 yrs mand). If a person refuses to submit to a chemical test under the implied consent law while operation a CMV, their CDL is "revoked" for a 1st refusal for not less than 1 yr (1 yr mand) and for a 2nd or subsequent refusal for not less then 10 yrs (10 yrs mand). In addition, a CMV operator who has any alcohol in their system must be placed "out-of-service" for 24 hours. §§259:3-b, 259:12-e, 259:14, 259:20-a, 263:94, 263:95 & 263:96

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	**Vehicle Registration Revocation.** For either (1) a 2nd or subsequent DWI offense conviction or (2) an **Aggravated Driving While Intoxicated** offense conviction, the driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. §261:180, III
Miscellaneous Sanctions Not Included Elsewhere:	**At Risk Driver (Probationary License).** Any person who shall apply for reissuance of their license following an drunk driving offense conviction is an "at risk" driver and their license shall be probationary for 3 yrs. Such probationary license may be suspended from **90 to 180 days** if the driver operates a motor vehicle with a BAC/BrAC ≥0.03. §263:14a(I) & (II) Note: This suspension may not be mandatory. **Liquor Forfeiture.** Except for liquor intended for sale, any liquor on the defendant's person at the time the defendant is taken into custody is forfeited to the State. §179:4

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Negligent Homicide-Cl A felony-if death results from the operation of a motor vehicle while DWI §630:3, II
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **15 yrs**[1] §651:2, II(a)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$2,000** §651:2, IV(a)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev**[2] §630:3, III
Length of Term of Licensing Withdrawal:	Up to **7 yrs**[2] §630:3, III
Mandatory Action--Minimum Length of License Withdrawal:	**None**
Other:	**Vehicle Registration Revocation.** The driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. §261:180, III

[1]For either a 2nd or 3rd offense, a defendant may be sentenced from 10 to 30 yrs. 651:6(I)(l) & (m) and (II)
[2]A driver's license can be either suspended or revoked for not more than 3 yrs if they operate a vehicle in a reckless or unlawful manner and cause an accident which results in either death or injury to another person. §263:56, I(g) & III(a)

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	Misd - Not more than **1 yr** §§625:9, IV, 263:64 & 651:2, II(c) Note: The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)
Mandatory Minimum Term of Imprisonment:	**7 con 24 hrs** periods §263:64, IV
Fine ($ Range):	Not more than **$1,000** §263:64, IV
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Rev** §263:64, IV
Length of Term of License Withdrawal Action:	**An additional 1 yr**
Mandatory Term of License Withdrawal Action:	**An additional 1 yr**
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §§259:39 & 262:18 et seq.
Grounds for Being Declared an Habitual Offender:	3 serious offs. (w/n 5 yrs), 12 moving violations (w/n 5 yrs) or 1 serious off. and 8 moving violations (w/n 5 yrs)
Term of License Rev While Under Habitual Offender Status:	Rev **1 to 4 yrs** 262.19, III An habitual offender may have to successfully complete a "Driver Attitude Program" before their license can be reinstated. §263:56-e
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Note: Type of off is not specified in the statute. It is probably a Cl B felony with modifications in the penalty as provided in the habitual offender law. §625:9, III(a)(2)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Felony **1 to 5 yrs** §§262:23, I & 625:9, III A person may also be sentenced to home confinement as a condition of probation. §651:2, V(b)
Mandatory Minimum Term of Imprisonment:	**1 yr** if the person has been convicted of a misd. or felony traffic offense convictions. §262:23, III
Fine ($ Range):	Possible fine of not more than **$4,000** No fine is stated in §262:23. However, §651:2, IV(a) provides that a person convicted of a felony may be subject to a fine of not more than $4,000.

Special Note: It appears to be a violation of the general provisions of the law, which prohibit the operation a motor vehicle while suspended or revoked, to operate a CMV during a CDL suspension. A person convicted of this offense is subject to probation, conditional or unconditional discharge or a fine of not more than $1,000. §§263:64, I & VII and 651:2, III & IV(a)

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** (Required) §§262-A:69-1 & §265:93
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**Yes**
Pedestrian:	**Yes**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[1] (Year Eff: 1985) §§175:1, 179:5 & 179:6
Minimum Age (Years) Possession:	**21** There are employment exemptions. §§179:10 & 179:23
Minimum Age (Years) Consumption:	**None**
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §507-F:1 et seq.[2] Note: This statute appears to have abrogated previous case law concerning dram shop liability. §507-F:8
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** The following case law appears to have been abrogated by §507-F:1 et seq. See *Burns v. Bradley,* 419 A.2d 1069 (1980), which held that New Hampshire permits a plaintiff to maintain a common law (negligence) cause of action against a liquor licensee for injuries received as a result of being served additional liquor while in an intoxicated state. See also *Ramsey v. Anctil,* 211 A.2d 900 (N.H. 1965).
Dram Shop Actions-Social Hosts:	**Yes** *Hickingbotham v. Burke,* 662 A.2d 297 (N.H. 1995),[3] & *MacLeod v. Ball,* 663 A.2d 632 (N.H. 1995)
Other:	Under §507-F:5, a licensee may be held liable for the injuries sustained by an intoxicated patron if the serve of alcoholic beverages was reckless.

[1]It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to "misrepresent" their age in order to obtain alcoholic beverages. §179:9(I)

[2]New Hampshire's Dram Shop Law is similar to the Model Alcoholic Beverage Retail Licensee Liability Act of 1985. This model law was developed via a grant for the National Institute on Alcohol Abuse and Alcoholism.

[3]The court based its decision on whether there was negligence based upon the reckless service of alcoholic beverages by the social host. The case concerned an injured intoxicated minor guest. **Comment:** Language in the case would seen to indicated that either an injured adult guest or a third party, who has been injured by an intoxicated guest, could also recover damages against a social host.

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd**[1] (For corporations-Felony) §§179:5 & 179:58(I)
Term of Imprisonment:	Not more than **1 yr** §651:2(I)(c)
Fine ($ Range):	Not more than **$2,000** §651:2(IV)(a) (For corporations-not more than $100,000) §651:2(IV)(b))
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §179:57
Length of Term of License Withdrawal:	Time period is not specified in the statute for either susp or rev. Administrative fine of $100 to $5,000 in lieu of a susp/rev. §179:57
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd**[1] (For corporations-Felony) §§179:5, 179:6 & 179:58(I)
Term of Imprisonment:	Not more than **1 yr** §651:2(I)(c)
Fine ($ Range):	Not more than **$2,000** §651:2(IV)(a) (For corporations-not more than $100,000 §651:2(IV)(b))
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §179:57
Length of Term License Withdrawal:	Time period is not specified in the statute for either susp or rev. Administrative fine of $100 to $5,000 in lieu of a susp/rev. §179:57
Anti-Happy Hour Laws/Regulations:	**No**[2]
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §§179:27-a(II) & 265:81
Anti-Consumption Law (Yes/No):	**No**

[1]The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)
[2]However, the service of "free drinks" is prohibited except for wine tasting purposes. §179:44

STATE:	**NEW JERSEY**
General Reference:	New Jersey Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §39:4-50(a) See the Special Note below.
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1,2&3] §39:4-50(a) Persons Under 21 Years Old-≥**0.01 but <0.10**[1,2&4] §39:4-50.14
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **A Narcotic** (2) A Hallucinogenic Drug or (3) A Habit-Producing Drug §39:4-50(a)
Other:	For Commercial Motor Vehicle Operators, see p. 3-324.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Probably Yes** Under §39:4-50.2(a) only "reasonable grounds" seems to be required. However, under §39:4-50.4a, a driver's license can only be revoked when the refusal is based on an arrest.
Implied Consent Law Applies to Drugs (Yes/No):	**No**
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *State v. Stever,* 527 A.2d 408 (N.J. 1987)
Other Information:	(1) An "involuntary" blood (not breath) sample may be obtained from a person who has been arrested for a DWI offense; i.e., a blood sample may be taken by "force". *State v. Dyrl,* 478 A.2d 390 (N.J. 1984), & *State v. Woomer,* 483 A.2d 837 (N.J.Super.A.D. 1984) (2) Tests for alcohol shall be made on automobile drivers who survive traffic accidents fatal to others. §§2A:84A-22.5, 26:2B-24 & *State v. Figueroa,* 515 A.2d 242 (N.J.Super.A.D. 1986), certif. den. 526 A.2d 204

[1]Standard: Percent by weight of alcohol in the blood. §§39:4-50(a) & 39:4-50.14

[2]In *State v. Downie,* 569 A.2d 242 (N.J. 1990), the New Jersey Supreme Court held that breathalzyer results must be given "judicial notice". The court felt that this was is in keeping with the legislature's policy of measuring alcohol in the brain for the purpose of determining whether a person was DWI. **Comment:** The practical end result of this decision was to in effect create a "judicial" illegal per se law based on BrAC. See the dissenting opinion in the *Downie* case.

[3]*State v. Lentini,* 573 A.2d 464 (N.J.Super.A.D. 1990)

[4]The only sanctions for this offense are community service and forfeiture of driving privileges. These sanctions are in addition to any other penalties provided by law for a DWI offense. §39:4-50.14

Special Note: Under separate statutory provisions, it is illegal for a person to operate a motor vehicle while under the influence of intoxicating liquor, any narcotic or any habit forming drug (1) on highways operated by the Port Authority of New York and New Jersey, (2) on any "project" of the New Jersey Highway Authority, (3) on any "project" of the New Jersey Turnpike Authority or (4) on any "project" of the South Jersey Transportation Authority. §§27:12B-18, 27:23-26, 27:23-32, 27:25A-21, 32:1-154.3, 32:1-154.9, 32:1-154.10, 32:1-154.14, 32:1-154.18(2) & 32:1-154.19 It is illegal to operate a motorized bicycle while under the influence of intoxicating liquor, any narcotic drug or any habit forming drug. §39:4-14.3g The law provides that a violation of these provisions results in the same sanctions as for violating the regular DWI law (§39:4-50).

Chemical Tests for Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**No**
Urine:	**No**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** (Alcohol Screening Required) §39:4-50(b)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	Fine **$250 to $500** §39:4-50.4a
Administrative Licensing Action (Susp/Rev):	1st Refusal-**Rev 6 mos**[1] (Mand); 2nd refusal-**Rev 2 yrs**[1] (Mand); sub refusal-**Rev 10 yrs**[1] (Mand) §§39:4-50.2 & 39:4-50.4a
Other:	**Surcharge.** A surcharge of **$100** §39:4-50.8

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	**Special Note:** A drunk driving offense is not a "crime". *State v. Hamm,* 577 A.2d 1259 (N.J. 1990)
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off-Not more than **30 dys**; 2nd off (w/n 10 yrs of a first off)-**48 cons hrs-90 dys**; 3rd and subsequent offs (w/n 10 yrs of a second off)-Not less than **180 dys** §39:4-50

[1]Under separate statutory provisions, a person, who refuses to submit to a chemical test, after being charged with operating a CMV either with a BAC ≥0.04 or while under the influence of a controlled substance, is subject (1) to a fine of $250 to $500 and (2), for a 1st refusal, mand lic rev (i.e., a loss of all driving privileges) for a for 6 mos or, where there has been either a prior refusal or a prior drunk driving offense under any provisions of law mand lic rev for 2 yrs. §§39:3-10.13 & 39:3-10.24(f)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:	1st off-**No**[1&2]; 2nd off-**48 con hrs**[1&2]; 3rd and sub offs-**90 dys**[1,2&3]
Fine:	
Amount ($ Range):	1st off-**$250 to 400**[4]; 2nd off (w/n 10 yrs of a first off)-**$500 to 1,000**[4]; 3rd and subsequent offs (w/n 10 yrs of a second off)-**$1,000**[4] §39:4-50
Mandatory Min. Fine ($):	1st off-**$250**[4]; 2nd off (w/n 10 yrs of a first off)-**$500**[4]; 3rd and subsequent offs (w/n 10 yrs of a second off)-**$1,000**[4] §39:4-50, *State v. Laurick,*4 575 A.2d 1340 (N.J. 1990), & *State v. Hamm,* 577 A.2d 1259 (N.J. 1990)
Other Penalties:	
Community Service:	2nd off-**30 dys**[5]; 3rd and subsequent off-Not more than **90 dys** as an alternative to imprisonment; i.e. not more than 90 dys of the 180 dy sentence may be served performing community service. Persons Under 21 Years Old-BAC ≥0.01 but <0.10-**15 to 30 dys** community service.[6] §39:4-50.14
Restitution (eg Victim's Fund)	**Yes** (1) Paid by the defendant to a victim §§2C:1-5(b), 2C:43-2, 2C:43-3 & 2C:44-2 (2) A victim is also eligible to receive payment from the State's Violent Crimes Compensation Board. §52:4B-11
Other:	**None**
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	For an "alleged" DWI related injury or death (as well as for other serious driving offenses), the licensing agency may issue a preliminary suspension without a hearing. When the agency notifies the driver of the preliminary action, it also advises them of any final licensing action that is to be taken. The driver can, of course, request a hearing prior to the final action being taken. §§39:5-30(e) & 39:5-31
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	**Rev** (probably) The statute uses the terminology "forfeit his right to operate a motor vehicle." §§39:4-50 & 39:4-50.14 **Special Note:** Under separate statutory authority, the licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30(a)

[1]See Rehabilitation on p. 3-324.

[2]**Work Release.** At the court's discretion, a defendant may be allowed to participate in a work release program. §39:4-51 **Comment:** The law does not require that a minimum period of incarceration be served prior to participating in this program.

[3]The law provides that the court may substitute no more than 90 dys of the 180 dy jail term for community service on a day-for-day basis. Consequently, a 3rd or subsequent DWI offender would still be subject to a mandatory jail term of at least 90 dys. §39:4-50(a)(3) and *State v. Laurick,* 575 A.2d 1340 (N.J. 1990) The law requires some type of confinement for at least 90 dys. *State v. George,* 608 A.2d 957 (N.J.Super.A.D. 1992)

[4]In addition to any fine, defendants must pay the following fee and surcharge. Defendants must pay an $100 fee to the Alcohol Education and Enforcement Fund (§39:4-50(b)) and are charged a $100 surcharge which goes into a Drunk Driving Enforcement Fund (§39:4-50.8).

[5]May be mandatory and in addition to the minimum term of imprisonment.

[6]The community service and driver licensing sanctions against a person under 21 yrs old for operating a motor vehicle with a BAC ≥0.01 but <0.10 are in addition to any other penalties that may be imposed for a violation of any other DWI related law. §39:4-50.14

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**6 mos to 1 yr**[1]; 2nd off-**2 yrs**[1]; 3rd and subsequent offs[1]-**10 yrs** Persons Under 21 Years Old-BAC ≥0.01 but <0.10-**30 to 90 dys** See Footnote No. 6 on p. 3-323. **Special Note:** For discretionary licensing actions under §39:5-30, the law does not specify the periods of license suspension or revocation.
Mandatory Minimum Term of Withdrawal:	1st off-**6 mos**; 2nd off-**2 yrs**; 3rd and subsequent offs-**10 yrs** See the Special Note below. Persons Under 21 Years Old-BAC ≥0.01 but <0.10-**30 dys** See Footnote No. 6 on p. 3-323.
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** See the Special Note below. Persons Under 21 Years Old-BAC ≥0.01 but <0.10-**Yes** §39:4-50.14
Alcohol Treatment:	1st Off-**Yes**[2]; 2nd Off-**Yes**[3]; 3rd and subsequent offs-**Yes**[4] §39:4-50 See the Special Note below. Persons Under 21 Years Old-BAC ≥0.01 but <0.10-**Yes** §39:4-50.14
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	Under §39:5-30(a), the licensing agency has the discretionary authority to suspend or revoke the vehicle registration certificates of a person for any violation of the traffic laws or on "other reasonable grounds".

[1]For offenders <17 yrs old, license forfeiture through their 17th birthday plus the regular forfeiture period. §39:4-50
[2]There appears to be a mandatory treatment of from 12 to 48 hrs (spent during two consecutive days of not less than six hours each day) which is to be spent in an intoxicated driver resource center.
[3]The imprisonment term may be served in an intoxicated driver resource center.
[4]The imprisonment term may be served in an inpatient rehabilitation facility but not an intoxicated driver resource center.

Special Note: A person convicted of a DWI offense must satisfy the requirements of a program of alcohol education and rehabilitation approved by the Director of the Division of Motor Vehicles. Failure to satisfy such requirements shall result in a driver's license rev or susp or continuation of rev or susp until such requirements are satisfied (unless stayed by court order in accordance with Rule 7:8-2 of the N.J. Court Rules, or §39:5-22). §39:4-50(b)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is "suspended" for not less than 1 yr (1 yr mand) nor more than 3 yrs (3 yrs (mand) if transporting hazardous materials) if, while operating a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of intoxicating liquor or a controlled substance, (3) violate the drunk driving law (§39:4-50), (3) refuse to submit to a chemical test for an alcohol concentration or (4) their CDL is either suspended, revoked, disqualified or under an out-of-service order. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the privilege to operate a CMV is "revoked" is for life (10 yrs mand). A CMV operator, who refuses to submit to a chemical test, is subject to a fine of not less than $250 nor more than $500. §39:3-10.9 et seq. See Footnote No. 1 on p. 3-322.

Sanctions Following a Conviction for a DWI Offense: (continued)

Miscellaneous Sanctions Not Included Elsewhere:	**Special Assessment.** A defendant shall be assessed a penalty of $50 which is to be paid into a fund administered by the Violent Crimes Compensation Board. §2C:43-3.1(c) **Insurance Surchages.** A DWI offender must pay the following insurance surcharges: 1st & 2nd offs-**$1,000** per yr for 3 yrs for a total surcharge of **$3,000** for each conviction; and, 3rd off (w/n 3 yrs)-**$1,500** per yr for 3 yrs for a total surcharge of **$4,500**. §17:29A-35(b)(2) ***Per Diem* Fees.** DWI offenders, who are incarcerated in an Intoxicated Driver Resource Center, must pay the following *per diem* fees: 1st Off-**$75**; 2nd Off-**$100**. Note: These fees may be increased via regulations promulgated by the Commissioner of Health after consulting with the Governor's Council on Alcoholism and Drug Abuse. §39:4-50(f)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Crime of the third degree[1] Death must have resulted from the reckless operation of a vehicle. "Death by auto" §2C:11-5
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**3 to 5 yrs** §2C:43-6(a)(3)
Mandatory Minimum Term:	If the offense was DWI related-**270 dys**[2]
Fine ($ Range):	Not more than **$15,000** §2C:43-3(b)(1)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	The licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30(a) Important: See "Other" under Pre-DWI Conviction Licensing Action on p. 3-323.
Length of Term of Licensing Withdrawal:	For discretionary licensing actions under §39:5-30, the law does not specify the periods of license suspension or revocation.
Mandatory Action--Minimum Length of License Withdrawal:	
Other:	**Restitution** by the defendant (§2C:43-3) or via the Violent Crimes Compensation Board (§52:4B-1 et seq.)

[1]This offense is not specifically classified as either a "felony" or a "misdemeanor." I.e., the criminal code (Title 2C) does not define these terms. To cope with this lack of definitions, the N.J. Supreme Court has held that a crime can be considered "equatable" to a "common law felony" if a defendant can be sentenced to the State prison for more than 1 yr. *State v. Doyle,* 200 A.2d 606 (N.J. 1964), & *Kaplowitz v. State Farm Mutual Auto. Ins. Co.,* 493 A.2d 637 (N.J.Super.L. 1985). **Comment:** However, §2C:43-1(b) provides that any crime, not listed in Title 2C and classified as a "high misdemeanor," is considered to be a Crime of the Third Degree. As a result, a conflict appears to exist in the law.

[2]Alternative-270 dys of community service. A combination of 270 dys of community service and jail can also be imposed. §2C:11-5 and *State v. Pineda,* 546 A.2d 578 (N.J.Super.A.D. 1988)

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	**10 to 90 dys** §39:3-40(f)(2)
Mandatory Minimum Term of Imprisonment:	**10 dys** may be mandatory §39:3-40(f)(2)
Fine ($ Range):	**$500**[1] §39:3-40(a) & (f)(2)
Mandatory Minimum Fine:	**$500**[1] may be mandatory §39:3-40(f)(2)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp** §39:3-40(f) **Special Note:** Under separate statutory authority, the licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30(a)
Length of Term of License Withdrawal Action:	An additional period of not less than **1 yr** nor more than **2 yrs**[2] §39:3-40(f)(2) **Special Note:** For discretionary licensing actions under §39:5-30, the law does not specify the periods of license suspension or revocation.
Mandatory Term of License Withdrawal Action:	**1 yr**
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §39:5-30a
Grounds for Being Declared an Habitual Offender:	3 license susps for traffic offenses w/n 3 yrs §39:5-30a
Term of License Rev While Under Habitual Offender Status:	**Susp** for not more than **3 yrs** §39:5-30b Type of Criminal Offense if This susp is not to run concurrently with any other susp. §39:5-30d
Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**30 dys** or **45 dys** if the offense resulted in bodily injury §39:5-30e

[1]**Comment.** Although the law is not specific, the following fines, which could be mandatory, may apply for subsequent offenses related to driving after license has been suspended for a drunk driving offense: 2nd offense-$750; and, or subsequent offense-$1,000. §39-3-40(b) & (c)

[2]**Vehicle Registration Revocation.** For either a 1st or subsequent offense (w/n 5 yrs), the registration of the offender's vehicle may be revoked for the same period of time as the license suspension. However, temporary registration and tags may be issued so that other persons can use the vehicle for employment, educational, health or medical purposes. §§39:3-40(a), (b) & (c) and 39:3-40.1 et seq.

Special Note: If a person operates a CMV during either a CDL suspension/revocation or a CDL out-of-service order, they are subject to an imprisonment term of not more than 90 dys and/or a fine of not more than $5,000. In addition, an offender is subject to an additional CDL suspension/revocation as noted under DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL) on p. 3-324. If an offender injuries another person as a result of such illegal operation, they appear to be subject to a mandatory 90 dy jail sentence and a $5,000 fine. §39:3-10:18(b)

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	**45 dys** if the offense resulted in bodily injury §39:5-30e
Fine ($ Range):	**$1,000** §39:5-30e
Mandatory Minimum Fine ($):	**$1,000** §39:5-30e This fine appears to be mandatory.
Licensing Actions (Specify):	The licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30(a) The law does not specify the periods of license suspension or revocation.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**Yes** §26:2B-24
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §§33:1-77 & 33:1-81 (Year Eff: 1983)
Minimum Age (Years) Possession:	**21**[1] §2C:33-15 There is an exemption for employment.
Minimum Age (Years) Consumption:	**21**[1] §§2C:33-15, 9:17B-1 & 33:1-81(b)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes**[2] §2A:22A-1 et seq. In order to be held liable, it must be shown that the licensee served alcoholic beverages to either a "minor" or a "visibly intoxicated" person.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No**[3] Note: Previous case law (e.g., *Rappaport v. Nichols,* 156 A.2d 1 (N.J. 1959)) has been abrogated by the above dram shop statute.
Dram Shop Actions-Social Hosts:	**Yes** §2A:15-5.5 et seq. These provisions provide the exclusive remedy against a social host who has "provided" alcoholic beverages to an injury causing guest where (1) the guest is over the legal drinking age and is visibly intoxicated and (2) the injuries are the result of negligent operation of a vehicle by the guest (§2A:15-5.6). The courts have held that the term "provided" includes "self service" by guests as well as the

[1]Possession or consumption in a public place.

[2]Under a New Jersey regulation, NJAC 13:2-23-1, a bartender can be held liable for the injuries of either an intoxicated patron or a person the patron injuried if the bartender continued to serve alcoholic beverages to the patron when it should have been known that The patron was intoxicated.

[3]A Federal appellate court has held that, under New Jersey law, a gambling patron does not have a common law cause of action against a casino for gambling loses which might have been incurred as a result of the patron's intoxication. *Hakimoglu v. Trump Taj Mahal Associates,* 70 F.3d 291 (3rd Cir. 1995)

Other State Laws Related To Alcohol Use: (continued)

"direct" service" of alcoholic beverages by the host on the social host's premises. The "provided" alcoholic beverages includes those alcoholic beverages that may have been brought by other guests. *Dower v. Gamba,* 677 A.2d 1364 (N.J.Super. A.D. 1994) Previous case law concerning "adult" guests appears to have been abrogated by these sections. *Kelly v. Gwinnell,* 476 A.2d 1219 (N.J. 1984)

Gowever, common law liability against social hosts who serve alcoho beverages to persons under the legal drinking age does not appear to have been affected by the above sections. *Linn v. Rand,* 356 A.2d 15 (N.J.Super.A.D. 1976), & *Thomas v. Romeis,* 560 A.2d 1267 (N.J.Super.A.D. 1989) Parents may be held liable for the injuries sustained by an intoxicated minor guest, who consumed alcoholic beverages at an unsupervised party hosted by the parents' child. *Witter v. Leo,* 635 A.2d 580 (N.J.Super.A.D. 1994)

Other: Under §2A:22A-5, a licensee may be held liable for the injuries sustained by an intoxicated patron. Likewise, a social host is not liable for the injuries sustained by an adult social host where such injuries were the result of the negligent service of alcoholic beverages to such guest. §2A:15-5.7 and *Kollar v. Lozier,* 669 A.2d 845 (N.J.Super.A.D. 1996)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action: Probably a petty disordery persons offense[1] See Regulation NJAC 13:2-23:1 which was promulgated under §33:1-39 and the Special Note below.

Term of Imprisonment: Not more than **30 days** under §33:1-92; **None** under §33:1-12.37

Fine ($ Range): Not more than **$500** under §33:1-92; **$50-250** under §33:1-12.37

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Susp/Rev** §33:1-31

Length of Term of License Withdrawal: Susp-Length of suspension is not specified in the statute; Rev-1st off-**2 yrs**; sub. off-**Permanent revocation** Note: A compromise sum of money may be paid in lieu of a suspension.

[1]§§2C:1-4, 2C:1-5b, 2C:43-1, 2C:43-3 & 2C:43-8

Special Note: Sec. 33:1-92 gives the sanctions for a "violation of this act" (i.e., the Alcoholic Beverage Control (ABC) Law. Sec. 33:1-12.37 gives a fine sanction for "violating any provision of this act (i.e., the ABC Law) or of any rule or regulation issued pursuant to this act." However, this section does not preclude the imposition of the sanctions under §33:1-92.

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:	Disorderly Person Off §§2C:33-17, 2C:43-3(c), 2C:43-8, and 33:1-77
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$1,000**

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §33:1-31
Length of Term License Withdrawal:	Susp-Length of suspension is not specified in the statute; Rev-1st off-**2 yrs**; sub. off-**Permanent revocation** Note: A compromise sum of money may be paid in lieu of a suspension.
Anti-Happy Hour Laws/Regulations:	**Yes** NJAC 13:2-23.16 (regulation) Note: This regulation does not per se regulate the price of "single" drinks. It does, however, prohibit the selling of an unlimited quantity of drinks at one price or the charging of one price for two or more drinks.

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):	**No**[1]
Anti-Consumption Law (Yes/No):	**Yes** Drivers and passengers The law prohibits the consumption of alcoholic beverages by either a driver or passenger while the veh is being operated. There are exceptions for certain vehicles for hire. §39:4-51a

[1]Under §39:4-51a(b), a person is presumed to have violated the anti-consumption law (§39:4-51a(a)) if (1) a partially filled "unsealed" container of an alcoholic beverage is found in a vehicle's passenger compartment and (2) the appearance of either the driver or passenger(s) indicates that they have consumed alcoholic beverages. *State v. Moore,* 588 A.2d 889 (N.J.Super.A.D. 1991)

STATE:	**NEW MEXICO**
General Reference:	New Mexico Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §66-8-102(A)
Illegal Per Se Law (BAC/BrAC):	≥**0.08**[1&2] §§66-8-102(C) & 66-8-110(E)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of **Any Drug** §66-8-102(B)
Other:	**Aggravated DWI Offense:** Either (1) driving with a BAC/BrAC ≥0.16[2], (2) causing bodily injury (an injury which is not likely to cause death or great bodily harm) while under the influence of alcohol or drugs or (3) refusing to submit to a chemical test and driving while under the influence of intoxicating liquor or drugs. §66-8-102(D) & (L)(1) For Commercial Motor Vehicle Operators, see p. 3-334.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §66-8-107
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §66-8-107
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes**[3] (Criminal & Possibly Civil Cases) *McKay v. Davis,* 653 P.2d 860 (N.M. 1982)
Other Information:	A driver may be required to submit to a chemical test based on a search warrant issued by a court upon probable cause that the driver has killed or greatly injured another person while operating a motor veh or where there is probable cause to believe that the driver committed a felony while under the influence of alcohol or a "controlled substance". §66-8-111(A)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §66-8-107
Urine:	**No**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**[4] **Special Note:** A driver must be charged with a DWI offense if they have an alcohol concentration ≥0.08. §66-8-110(C)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.
[2]Alcohol concentration is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §66-8-110(E)
[3]Refusal to perform field sobriety tests can also be admitted into evidence. *State v. Wright,* 867 P.2d 1214 (N.M.App. 1993)
[4]A DWI offender is not eligible for conditional discharge where the court, without entering an order of adjudication of guilt, places the offender of probation. §31-20-13

Adjudication of DWI Charges: (continued)

Anti-Plea Bargaining Statute (Yes/No):	**Yes (Limited)** §§66-8-102.1 If a guilty plea is entered, it must be to one of subsections of the DWI statute when alcohol concentration is ≥0.08.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** DWI-PSI screening is required. §66-8-102(E) & (H)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**Rev 1 yr** (Mand) §§66-5-35(A)(1) & 66-8-111(B)
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note and Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	DWI/Aggravated DWI Offenses: 1st off-Not more than **90 dys** (For a 1st off, where there has been a dismissal of the charges, see Rehabilitation on p. 3-334.); 2nd and 3rd offs-Not more than **364 dys**; 4th off (4th Degree Felony)-**18 mos** §§31-18-15 & 66-8-102 Great bodily injury where the driver was under the influence of intoxicating liquor or drugs (3rd Degree Felony)-**3 yrs**[1&2] §§31-18-15 & 66-8-101 See Footnote No. 3.

[1]For any noncapital felony offense, the sentence may be altered by as much as one third by the court depending upon the aggravating or mitigating circumstances. §31-18-15.1

[2]For each prior DWI offense conviction (w/n 10 yrs), the basic imprisonment sanction is increased by an additional 2 yrs.

[3]A person, who operates a motor vehicle either while under the influence of alcohol/drugs or while violating §66-8-113 and who causes injuries to a pregnant woman, is guilty of a third degree felony. §§66-8-101.1 & 31-18-15 The sentence is increased by 2 yrs if there is an injury to a person 60 yrs old or older or to a handicapped person. §31-18-16.1

Special Note: For the purposes of determining whether a person is a subsequent offender, a 1st offender includes persons who have had DWI charges dismissed via a deferred sentence. As of February 25, 1994, deferred sentencing is prohibited for DWI offenses. §§31-20-13(C), 66-1-4.6(C), 66-1-4.16(Q) & 66-8-102(E)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State ex rel. Schwartz v. Kennedy,* 904 P.2d 1044 (N.M. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:	DWI Offenses: 1st off-**No**[1]; 2nd off-**72 cons hrs**; 3rd off-**30 con dys**; 4th off-**6 mos** Aggravated DWI Offenses: 1st off-**48 con hrs**; 2nd off-**96 cons hrs**; 3rd off-**60 con dys**; 4th off-**6 mos** §66-8-102 Great bodily injury where the driver was under influence of intoxicating liquor or drugs-3rd Degree Felony-**2 yrs** See Footnote No. 1 on p. 3-332.
Fine:	
Amount ($ Range):	DWI/Aggravated DWI Offenses: 1st off-Not more than **$500**[2]; 2nd and 3rd offs-Not more than **$1,000**; 4th off-Not more than **$5,000** §§31-18-15 & 66-8-102 Great bodily injury where the driver was under influence of intoxicating liquor or drugs-3rd Degree Felony-Not more than **$5,000** §31-18-15
Mandatory Min. Fine ($):	DWI/DWI Aggravated Offenses: 1st off-**None**; 2nd off-**$500**; 3rd off-**$750**; 4th off-**None** Great bodily injury where the driver was intoxicated-**No**
Other Penalties:	
Community Service:	DWI/Aggravated DWI Offs: 1st off-**48 hrs** (or a $300 fine)[2]; 2nd off-**48 hrs** (mand) §66-8-102
Restitution (eg Victim's Fund)	**Yes** §31-17-1 Restitution is to be paid by the defendant.[3]
Other:	**BAC Test Fee.** A fee of **$65** is assessed against each defendant to defray the costs of chemical tests for DWI. §31-12-7(A) **DWI Program Fee.** A fee of **$75** is assessed to fund comprehensive DWI community programs. §31-12-7(B)
Administrative Licensing Actions:	See Double Jeopardy on p. 3-332.
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	1st Admin. Per Se Action-(1) For persons ≥21 yrs old who have a BAC/BrAC **≥0.08**[4]**-Rev 90 dys** (30 dys mand followed by restricted driving priviliges[5]) and (2) For persons <21 yrs of age who have a BAC/BrAC **≥0.02**[4]**-Rev 6 mos** (30 dys mand followed by restricted driving priviliges[5]); Subsequent Admin Per Se Action (all persons)-**Rev 1 yr** (mand) §§66-5-35(B), 66-8-110(D), 66-8-111(C)(1), (2) & (3) and (D) See Footnote No. 6.
Other:	Under §§66-5-29, 66-5-30(A)(1) & 66-5-32(A), for certain 1st DWI offs and all sub. ones, a person's license may be susp for not more than 1 yr if they have been convicted of an off. that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

[1]The only mandatory sanctions are either a fine or community service.
[2]As an alternative, an offender may be sentenced either to serve 48 hrs of community service or pay a $300 fine. §66-8-102(E)
[3]Restitution appears to be required if a sentence is either suspended or deferred. §§31-17-1B & 31-20-6
[4]See Footnote No. 2 on p. 3-331.
[5]Restricted driving privileges are allowed for either employment or education purposes provided the driver is enrolled in a drunk driving school and alcohol screening program. §66-5-35(B)
[6]For an admin. per se action, where a person either (1) has failed to complete a rehabilitation program for a 1st DWI off or (2) has been convicted of a second or subsequent DWI off, there is a **1 yr** mandatory license revocation. §66-5-29(A)(2) & (3) and (C)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	DWI/DWI Aggravated Offenses: 1st off-**Rev**; 2nd off-**Rev** §§66-5-29 & 66-5-32(B); 3rd off (w/n 10 yrs)-**Rev** §66-5-5(D)
Term of License Withdrawal (Days, Months, Years, etc.):	DWI/DWI Aggravated Offenses: 1st off-**1 yr**; 2nd off-**1 yr**; 3rd off (w/n 10 yrs)-**10 yrs**
Mandatory Minimum Term of Withdrawal:	DWI/DWI Aggravated Offenses: 1st off-See the Special Note below. 2nd off-**1 yr**; 3rd off-**10 yrs** §66-5-35(A)(2) **Special Note:** It appears that, if a person has been convicted of a 1st DWI/DWI Aggravated off but they are not subject to the mandatory license revocation provisions of the admin per se law, they may be able to obtain a restricted license. §66-5-35(A)
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** DWI/DWI Aggravated Offenses: For 1st offenders, the court either (1) shall order the defendant to attend a "DWI school" or other "rehabilitative services" or (2), in its discretion, may defer the DWI charges and place a defendant on probation on condition that they attended alc. education or rehabilitation. After the probation period, the court dismisses the DWI charges. §§31-20-9 and 66-8-102(D), (E), (G) & (H)
Alcohol Treatment:	See Alcohol Education above. For subsequent DWI offenders, the court may order a defendant to complete an alcohol treatment program. §66-8-102(G)
Vehicle Impoundment/Confiscation:	**None** See the Historical Note below.
Authorized by Specific Statutory Authority:	
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**[1]

[1]**Ignition Interlock.** New Mexico does not have a law requiring persons, who have been convicted of a drunk driving offense, to only operate motor vehicles that are equipped with ignition interlock devices. However this State's legislature has requested, via a memorial, that State judges require such use as part of the sentencing for either first of subsequent drunk driving law offenders. House Joint Resolution 22 adopted in 1998

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they either (1) have a BAC ≥0.04 but <0.08 (Standard: Percent by wgt. of alcohol in the blood), (2) are convicted of a drunk driving offense (§66-8-102) while operating a CMV or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). §§66-5-54, 66-5-68 & 66-5-68.1

Historical Note: In 1993, legislation that revised the DWI laws repealed provisions that provided for vehicle impoundment for drunk driving offenses. §7 of Act 66, Laws 1993 Prior law (formally §66-8-102(I)) provided for the following impoundment actions: 1st off-**None**; 2nd off-**30 dys**; 3rd off-**60 dys** As an alternative, the vehicle could be "immobilized" for the periods indicated. This action was held not to be mandatory. *State v. Barber,* 778 P.2d 456 (N.M.App. 1989), cert. den. by the New Mexico Supreme Court, 778 P.2d 911 (N.M. 1989)

Sanctions Following a Conviction for a DWI Offense: (continued)

Miscellaneous Sanctions Not Included Elsewhere:	**Driving Safety Course.** A DWI offender may be required to take a driving safety course. §66-10-11
Other Criminal Actions Related to DWI:	
Homicide by Vehicle:	
State Has Such a Law:	**Yes Misd** However, if the driver was intoxicated-**3rd Degree Felony** §66-8-101
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Misd-Not more than **90 dys**; 3rd Degree Felony-**3 yrs**[1] §§31-18-15 & 66-8-7B
Mandatory Minimum Term:	3rd Degree Felony-**2 yrs** See Footnote No. 1 on p. 3-332.
Fine ($ Range):	Misd-Not more than **$100**; 3rd Degree Felony-Not more than **$5,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Misd-**Susp**; 3rd Degree Felony-**Susp** §§66-5-29 & 66-5-20
Length of Term of Licensing Withdrawal:	Misd-**1 yr**; 3rd Degree Felony-**1 yr**
Mandatory Action--Minimum Length of License Withdrawal:	3rd Degree Felony-**1 yr**
Other:	Misd-**Restitution**; 3rd Degree Felony-**Restitution** Victim restitution is either via the offender or via a State reparations fund. §§31-17-1 & 31-22-1 et seq.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote Nos. 2, 3 , 4 & 5.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd Less than 1 yr** §§31-19-1(A) & 66-5-39(A)
Mandatory Minimum Term of Imprisonment:	**7 con dys** §66-5-39(A)
Fine ($ Range):	**$300 to $1,000** §66-5-39(A)
Mandatory Minimum Fine:	**$300** §66-5-39(A)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev** §66-5-39(C)

[1]For each prior DWI offense conviction (w/n 10 yrs), the basic imprisonment sanction is increased by an additional 2 yrs.
[2]Plea bargaining is not allowed to another offense. §66-5-39(A)
[3]The motor vehicle used in the offense shall be immobilized for 30 dys. However, such action is not taken if it would impose imminent danger to the health, safety or employment of the vehicle owner's or offender's family. §66-5-39(B)
[4]It is a misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term for not more than 90 dys and/or a fine of not more than $300. §§66-5-59(B) & 66-8-7
[5]A person, who operates a CMV in violation of an out-of-service order, is subject to the following sanctions: (1) A civil penalty of not less than $10 nor more than $25 and (2) is disqualified from operating a CMV as follows: 1st violation-a disqualification for not less than 90 dys (mand) not more than 1 yr; 2nd violation (w/n 10 yrs)-not less than 1 (mand) nor more than 5 yrs; and, 3rd or subsequent violation (w/n 10 yrs)-not less than 3 (mand) nor more than 5 yrs. §66-5-71

Other Criminal Actions Related to DWI: (continued)

Length of Term of License Withdrawal Action:	For driving while suspended - an additional suspension period equal to the original period. For driving while revoked - an additional revocation period of one (1) year. §66-5-39(C)
Mandatory Term of License Withdrawal Action:	The above additional suspension/revocation periods appear to be mandatory.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**Yes**[1] §24-11-6(B)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**[1]
Vehicle Passengers:	**Yes**[1]
Pedestrian:	**Yes**[1]

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1934) §§60-3A-3(0) & 60-7B-1
Minimum Age (Years) Possession:	**21** There is an exemption when the minor is on real property (not a licensed premises) under the control of a parent or guardian. §§60-3A-3(O) & 60-7B-1
Minimum Age (Years) Consumption:	**None** Note: A licensee cannot allow a person under 21 years old to consume alcoholic beverages on the licensed premises. §60-7B-1(A)(1)

[1]The information, that is obtained from these test results, can only be used for statistical purposes. I.e., the information cannot contain any identification about deceased persons. §24-11-6(B)

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** §41-11-1[1,2&3]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** but abrogated via §41-11-1(H)[3]
Dram Shop Actions-Social Hosts:	**Yes** §41-11-1(E)[1,2&3] Liability is based upon the host providing alcoholic beverages to the guest in reckless disregard of the rights of others including the guest. *Walker v. Key,* 686 P.2d 973 (N.M.App. 1984)
Other:	**None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:	**Petty Misd**-for persons; **Misd**-for corporations §§31-19-1(A) & (B), 31-20-1(A), 60-7A-16 & 60-7A-25
Term of Imprisonment:	**Not more than 6 mos**
Fine ($ Range):	**Not more than $500** (For corporations, not more than $1,000)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes**[4] §60-6C-1
Length of Term of License Withdrawal:	**2 yrs** §60-6C-8 An administrative fine of not more than $10,000 can also be imposed. §60-6C-1(B) **Special Note:** A license suspension/revocation or administrative fine is mandatory, if the licensee's employees or agents, "knowingly" serve alcoholic beverages in violation of the law and such violation was the second in 12 mos. §60-6C-1(B)

[1]The law (1) limits liability for social hosts to cases involving serving alcoholic beverages in reckless disregard of the rights of others and (2) increases the burden of evidence needed to hold liquor license establishments liable for serving alcoholic beverages to intoxicated persons.

[2]**Special Note:** The New Mexico Supreme Court has held that §41-11-1(I), which limits damage awards in dram shop cases, violates the equal protection clause of the New Mexico Constitution. *Richardson v. Carnegie Library Restaurant, Inc.,* 763 P.2d 1153 (N.M. 1988) Under this law, for each transaction or occurrence, damage awards are limited to either (1) $50,000 for injuries/death and $20,000 for property damage for one individual or (2) $100,000 for injuries/death and $20,000 for property damage for two or more persons.

[3]The dram shop law is the exclusive remedy for damages against either alcoholic beverage licensees or social hosts. §41-11-1(H) This provision, therefore, abrogated court decisions that had established liability via common law negligence. See, e.g., *Lopez v. Maze,* 651 P.2d 1269 (N.M. 1982), which concerned alcoholic beverage licensees, and *MRC Prop. v. Gries,* 652 P.2d 732 (N.M. 1982), which concerned social hosts.

[4]In emergency situations, licenses may be "summarily suspended". §60-6C-7

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** §60-7B-1
Term of Imprisonment:	**None**[1]
Fine ($ Range):	**Not more than $1,000**
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes**[2&3] §60-6C-1
Length of Term License Withdrawal:	**2 yrs** §60-6C-8 An administrative fine of not more than $10,000 can also be imposed. §60-6C-1(B) **Special Note:** A license suspension/revocation or administrative fine is mandatory, if the licensee's employees or agents, "knowingly" serve alcoholic beverages in violation of the law and such violation was the second in 12 mos. §60-6C-1(B)
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §66-8-138(B) & (C)
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §66-8-138(A)

[1]**Community Service.** A person, who is convicted of selling alcoholic beverages to a minor, must perform the community service related to reducing drunk driving as follows: 1st offense-30 hrs; 2nd offense-40 hrs; and, 3rd or subsequent offense-60 hrs. §60-7B-1(F)

[2]In emergency situations, licenses may be "summarily suspended". §60-6C-71

[3]In addition, a persons's license to sell alcoholic beverages under the Alcohol Server Education Act is suspended as follows: 1st violation-No suspension; 2nd violation-60 dy suspension; and, 3rd or subsequent violation-1 yr suspension. §60-7B-1(F)

STATE:	**NEW YORK**
General Reference:	McKinney's Consolidated Laws of New York Note: Most citations are to the Vehicle and Traffic Law (V&T Law).

Basis for a DWI Charge:

Standard DWI Offense:	I. Ability to operate a vehicle is impaired by the consumption of alcohol V&T Law §1192(1) II. Operate a motor vehicle while in an intoxicated condition[1] V&T Law §1192(3)
Illegal Per Se Law (BAC):	**≥0.10**[2] V&T Law §1192(2)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	**A Controlled Substance**[1&3] V&T Law §§114-a & 1192(4) and Public Health Law §3306
Other:	A BAC **>0.05** but **≤0.07**[2] is "relevant evidence" of being impaired. V&T Law §1195(2)(b) & (c) A BAC **>0.07** but **<0.10**[2] is *prima facie* evidence of impairment. V&T Law §1195(2)(b) & (c) For Commercial Motor Vehicle Operators, see p. 3-342.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** V&T Law §1194(1)(b) Note: The law does not specifically authorize the use of PBTs in all situations. The law only authorizes these tests in those situations where a driver has been involved in an accident and has committed a traffic law violation. A violation could include other offenses as well as DWI.
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[4&5] V&T Law §1194(2)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** V&T Law §1194(2)(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) V&T Law §1194(2)(f)
Other Information:	**Special Note:** Under V&T Law §1194(3), a driver may be compelled via court order to submit to a chemical test of their blood for either alcoholic or drug content if they have been involved in an accident related to a DWI offense and there has been a fatality or a serious physical injury.

[1]The law provides that no one shall operate a motor vehicle while in an intoxicated condition. This condition could be the result of drug as well as alcohol ingestion.

[2]Standard: Percent by weight of alcohol in the blood. V&T Law §§1192(2) and 1195(2)(b) & (c) Percent by wgt. of alcohol in the blood may be expressed as grams of alcohol per 100 milliliters of blood. 10 NYCRR §59.1(b), *People v. Ritchie,* 511 N.Y.S.2d 482 (Sup. 1987), & *People v. McDonough,* 518 N.Y.S.2d 524 (A.D. 4 Dept. 1987)

[3]The law provides that no one shall drive while impaired by drugs as defined in the motor vehicle law.

[4]A DWI arrest is one basis for requiring a person to submit to an implied consent chemical test (V&T Law §1194(2)(a)(1)). However, an arrest is not required in all situations. If a PBT indicates that alcohol has been consumed, a request to submit to a chemical test under the implied consent law may be made without the need for a formal arrest. V&T law §1194(2)(a)(2)

[5]A person under 21 yrs old, who has been stopped for operating a motor vehicle "after having consumed alcohol," cannot be arrested. However, they can be "temporarily detained" by law enforcement officers for the purpose of requesting a chemical test. V&T Law §1194(2)(a)(4

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** V&T Law §1194(2)(a)
Urine:	**Yes** V&T Law §1194(2)(a)
Other:	**Saliva** V&T Law §1194(2)(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Yes** Unless available evidence determines otherwise, plea bargaining is allowed only to another DWI offense. V&T Law §1192(10)(a) A person under 21 yrs old, who has been charged with "driving while impaired," may satisfy such charge by agreeing to an administrative license suspension or revocation under V&T Law §1192-a. V&T Law §1192(10)(c)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No** Note: See Criminal Procedure Law §390.20 for the general requirements related to pre-sentence investigations following a conviction for either a misdemeanor or felony.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**Infraction**[1] 1st Refusal: Jail-not more than **15 dys**; fine-not more than **$50**; 2nd Refusal (w/n 18 mos): Jail-not more than **45 dys**; fine-not more than **$100**; 3rd Refusal (w/n 18 mos): Jail-not more than **90 dys**; fine-not more than **$250** V&T Law §1800(b)
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**Rev** for at least **6 mos** (at least 1 yr if under 21)[2]; **Rev** for at least **1 yr** for a 2nd or subsequent refusal (w/n 5 yrs) or a 1st refusal where there has been a previous DWI off conviction (w/n 5 yrs) **Special Note:** These revs are mandatory. V&T Law §1194(2)(d) See 15 NYCRR (New York Code Rules and Regulations) 13 ¶3 & 139.4 for a temporary lic. susp. prior to a hearing on a refusal.
Other:	(1) Under V&T Law §1194(2)(b), a person who refuses to submit to a chemical test may have their license suspended at the time of arraingment based upon a sworn written police report.

[1]*People v. Steves,* 459 N.Y.S.2d 402 (Sup. 1983)

[2]For persons under 21 who have refused to submit to a chemical test and who have had either a previous alcohol/drug driving offense conviction or a prior administrative violation for operating a motor vehicle after having consumed alcohol, revocation for 1 year or until they reach 21 whichever is the longer revocation period.

Sanctions for Refusal to Submit to a Chemical Test: (continued)

Other: (continued)	(2) 1st refusal-**$300** ($350 if operating a CMV) Civil Penalty; 2nd or sub refusal (w/n 5 yrs) or a 1st refusal where there has been a prior DWI off (w/n 5 yrs) **$750** Civil Penalty V&T Law §1194(2)(d)(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note below and School Bus Operators on p. 3-342.
Imprisonment:	
Term (Day, Month, Years, Etc.):	I. "Impaired" alcohol status offs V&T Law §§1192(1) & 1193(1)(a)-1st off (Traffic Infraction)-Not more than **15 dys**; 2nd off[1] (w/n 5 yrs)(Misd)-Not more than **30 dys**; 3rd and any subsequent off[1] (w/n 10 yrs)(Misd)-Not more than **180 dys** II. Per Se and Intoxicated status offs[2]-1st off (Misd)-Not more than **1 yr** V&T Law §1193(1)(b); 2nd off[3] (w/n 10 yrs) Cl E Felony-Not more than **4 yrs**[4]; 3d off[3] (w/n 10 yrs) Cl D Felony-Not more than **7 yrs**[4] V&T Law §§1192 & 1193(1)(c)
Mandatory Minimum Term:	**None**
Fine:	
Amount ($ Range):	I. "Impaired" alcohol status offs-1st off-**$300 to $500**; 2nd off[1] (w/n 5 yrs)-**$500 to $750**; 3rd and any subsequent offs[1] (w/n 10 yrs)-**$750 to $1,500** V&T Law §1193(1)(a) II. Per se and intoxicated status off[2]-1st off (Misd)-**$500 to $1,000** V&T Law §1193(1)(b); 2nd off (w/n 10 yrs) Cl E Felony-**$1,000 to $5,000**; 3rd off (w/n 10 yrs) Cl D felony-**$2,000 to $10,000** V&T Law §1193(1)(c)
Mandatory Min. Fine ($):	I. "Impaired" alcohol status offs-1st off-**$300**; 2nd off (w/n 5 yrs)-**$500**; 3rd and any subsequent offs (w/n 10 yrs)-**$750** II. Per se and intoxicated off[2]-1st off (Misd)-**$500**; 2nd off (w/n 10 yrs) Cl E felony-**$1,000**[5]; 3rd off (w/n 10 yrs) Cl D felony-**$2,000**[5]
Other Penalties:	
Community Service:	**Yes** As a condition of probation. Penal Law §65.10(2)(h)
Restitution (eg Victim's Fund)	**Yes** (1) The court may require restitution by a defendant to a victim. Penal Law §§60.27 & 65.10(2)(g) (2) A person may also receive compensation from the State's victims' compensation fund. Executive Law §620 et seq.

[1]A previous alcohol offense conviction (of any type) is considered a previous offense.
[2]Includes driving while impaired by drugs.
[3]A previous offense also includes vehicle assault (Penal Law §§120.03 & 120.04) and vehicle homicide (Penal Law §§125.12 & 125.13).
[4]Penal Law §§70.00 & 80.00
[5]This fine (for a felony conviction) may not be mandatory. *People v. Porter,* 522 N.Y.S.2d 88 (Co.Ct. 1987)

Special Note: A person commits "Vehicle Assault", a Cl E Felony, if they injure another in a criminally negligent manner while in violation of the DWI law. It is a Cl D Felony if the offender committed this offense while driving on a suspended or revoked license where such action was based either on a refusal to submit to a chemical test or a drunk driving offense conviction. Penal Law §§120.036 & 120.04

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Ignition Interlock. I. A driving while impaired/intoxicated offender, who is sentenced to probation, may be required to only operate vehicles equipped with an "ignition interlock" device. V&T Law §1198 (repealed 7/1/99) II. The use of an "ignition interlock" may be a condition of probation for an illegal per se/intoxicated offense conviction. Penal Law §65.10(2)(k-1)
Surcharges. Felony-Mand surcharge of **$150** plus a $5 crime victim assistande fee Misd-Mand surcharge of **$85** plus a $5 crime victim assistande fee Penal Law §60.35 V&T Law §1809 provides that for any offense there is a mand surcharge of $25.

School Bus Operators: A person, who operates a school bus with a least one student passenger, in violation of the drunk driving laws is subject to the following sanctions. 1st Impaired status off-(Cl A Misd)-Imprisonment for not more than 1 yr and/or a fine of $500 to $1,500. V&T Law §1193(1)(d)(1-a) and Penal Law §§55.10(2)(b) & 70.15 License revocation for 1 yr V&T Law §1193(2)(b)(4-a)(a) Sub Imparied status off (w/n 10 yrs) (Cl E Felony)-Imprisonment for not more than 4 yrs and/or a fine of $1,000 to $5,000. V&T Law §1193(1)(d)(1-a) & (4) and Penal Law §70.00 License revocation for 3 yrs V&T Law §1193(2)(b)(4-A)(b) Per Se, Intoxicated and driving while impaired by drugs offs-(Cl E Felony)-Imprisonment for not more than 4 yrs and/or a fine of $1,000 to $5,000. V&T Law §1193(1)(d)(4-a) and Penal Law §§70.00 & 80.00 License revocation for 1 yr. (**Comment:** The law is not clear but a subsequent offender may receive a 3 yr revocation.) V&T Law §1193(2)(b)(4-a) & (b) See Footnote No. 5 on p. 3-343.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Licensing Action: A person will have their privilege to operate a CMV "revoked" for one (1) year (mandatory) (three (3) years (mandatory) if they were transporting hazardous materials) if, while operating a CMV they either (1) had a BAC ≥0.04 (percent by weight of alcohol in the blood), (2) violated any provision of the DWI law (V&T §1192, subds. 1, 2, 3 & 4) or (3) refused to submit to a chemical test for alcoholic/drug content. For either (1) a second violation or (2) a combination of two violations of any of the above listed items, there is a "disqualification" for a least ten (10) years (mandatory). For either (1) a third violation or (2) a combination of three violations of any of the above listed items, there is a mandatory permanent "disqualification". V&T Law §§501-a, 510-a, 530(5), 1193(2)(b)(5), 1193(2)(e)(3), 1194(2)(d)(1)(c) & (d) and 1196(5) **Criminal Sanctions:** Infraction: A person commits an "infraction" if they operate a CMV with a BAC at or above 0.04 but below 0.07 (a CMV Per Se Level I Offense V&T Law §1192, subd. 5). The sanctions for an this "infraction" are the same as for "impaired" driving. Misdemeanor: A person commits a misdemeanor if they operate a CMV with a BAC at or above 0.07 but below 0.10 (a CMV Per Se Level II Offense V&T Law §1192, subd. 6). For a first Per Se Level II Offense, the sanctions are a fine of $500 to $1,500 and/or a jail term of not more than 180 days. Either (1) for a subsequent Per Se Level II Offense (within five (5) years) or (2) for a first such offense where there has been a previous DWI offense conviction (within five (5) years), the sanctions are a fine of $500 to $1,500 and/or a jail term or not more than one (1) year. A person commits a misdemeanor if they operate a CMV and violate the regular provisions of the DWI law (V&T §1192, subds. 1, 2, 3 & 4). The sanctions for this offense are a fine of $500 to $1,500 and/or a jail term or not more than one (1) year. Felony: A person commits a Class E felony if they are convicted of a Per Se Level II offense and have been convicted 2 or 3 times w/n 5 years of either (1) a Per Se Level II offense or (2) any DWI offense (One of these must be a misdemeanor.). A person commits a Class D felony if they are convicted of a Per Se Level II offense and have been convicted 4 or more times w/n 5 years of either (1) a Per Se Level II offense or (2) any DWI offense (One of these must be a misdemeanor.). Class E felony sactions: A fine of $1,000 to $5,000 and/or a term of imprisonment of not more than 4 years. Class D felony sactions: A fine of $2,000 to $10,000 and/or a term of imprisonment of not more than 7 years. V&T Law §1193(1)(d)(1), (2), (3) & (4) and Penal Law §§55.10(1)(b), 55.10(2)(b), 70.00 & 70.15(1)(a)

DWI Offenses Involving Other Motor Vehicles Used In Commerce: The following sanctions apply to persons who operate taxicabs, liveries or a trunk weighing more than 18,000 lbs. but less than 26,000 lbs. while in violation of the regular provisions of the DWI law (V&T Law §1192, subds. 1, 2, 3 & 4). For a first offense the person commits a misdemeanor and may be fine $500 to $1,500 and/or a jail term of not more than one (1) year; in addition, their license is revoked for 1 year. For a 2nd offense (w/n 10) years), person commits a Class E felony and may be fined $1,000 to $5,000 and/or an imprisoned for of not more than 4 years; for a 3rd offense (w/n 10 years), person commits a Class D felony and may be fined $2,000 to $10,000 and/or an imprisoned for of not more than 7 years; in addition, such person is "disqualified" from operating these types of vehicles for at least five (5) years. V&T Law §§1193(1)(d)(1), (2), (3) & (4), 1193(2)(b)(4) & 1193(2)(e)(3) and Penal Law §§55.10(1)(b), 55.10(2)(b), 70.00 & 70.15(1)(a) Note: Operating a vehicle weighing >18,000 lbs while transporting flammable gas, radioactive materials or explosives and whle either Per Se, Intoxicated or driving while impaired by drugs offs is also a Cl E Felony with the criminal sanctions as noted above. V&T Law §1193(1)(d)(5)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Persons Under 21 Years Old. Operating a motor vehicle "**after having consumed alcohol**" A person is only considered to have consumed alcohol if their **BAC is ≥0.02 but <0.07** V&T Law §1192-a 1st action-**Susp-6 mos**[1] V&T Law §1193(2)(a) Sub. action-**Rev-1 yr** or until they reach 21 yrs old whichever is the greater period (mand)[2] V&T Law §1193(2)(b)(7) & (9)

Other:

I. **Temporary susp** is mandatory where a person is charged with a violation of V&T Law §1192(2), (3) & (4) and they have a previous alcohol/drug driving conviction of any type w/n 5 yrs. V&T Law §1193(2)(e)[3] See "Other" under Sanctions for Refusal to Submit to an Implied Consent Test on p. 3-340.

II. **Suspension Pending Prosecution.** (Eff. until November 1, 2000) A person, who has been arrested for driving while intoxicated or illegal per se under V&T Law §1192(2) & (3), must have their license suspended by the court, at the time of arraignment, if there is "reasonable cause to believe" that the person was operating a motor vehicle with a BAC ≥**0.10** (percent by wgt. of alcohol in the blood). However, this suspension is not mandatory. An offender is eligible for a conditional license after the suspension as been in effect for 30 dys. In addition, they are eligible for immediate driving privileges based on a showing of "extreme hardship" for educational, employment or medical purposes. V&T Law §§1193(2)(e)(7) & 1196(7)(h)[4] **Comment:** The law does not provide for a specific period of suspension.

Post DWI Conviction Licensing Action:

See the Special Note below and School Bus Operators on p. 3-342.

Type of Licensing Action
(Susp/Rev):

I. "Impaired" alcohol status offs[5]-1st off-**Susp** (Rev if person is under 21 years old); Sub off (w/n 5 yrs of 1 alcohol driving off

[1]This suspension is not mandatory. A conditional license is available if the offender participates in an alcohol rehabilitation program. V&T Law §1196(4) & (7)

[2]This revocation is mandatory even if the offender participates in an alcohol rehabilitation program.

[3]There must be "reasonable cause" to believe that the offender violated V&T Law §1192(2), (3) & (4) before the court can impose this suspension.

[4]V&T Law §1193(2)(e)(7), which provides for license suspension pending prosecution, has been held not to violate constitutional principles of due process of law. *Pringle v. Wolfe,* 668 N.E.2d 1376 (N.Y. 1996) In addition, a person, who has been subjected to licensing action under V&T Law §1193(2)(e)(7), may also be subsequently prosecuted and punished for a drunk driving offense. Such subsequent criminal action does not violate the constitutional prohibition against double jeopardy. *Smith v. County Court of Essex County,* 649 N.Y.S.2d 507 (A.D. 3 Dept. 1996), *People v. Conrad,* 654 N.Y.S.2d 226 (Sup. 1996), *People v. Haishun,* 656 N.Y.S.2d 660 (A.D. 2 Dept. 1997), *People v. Steele,* 661 N.Y.S.2d 908 (Sup. App. Term 1997), *People v. Uzquanio,* 661 N.Y.S.2d 438 (Sup.App.Term. 1997), & *People v.Busby,* 670 N.Y.S.2d 960 (Sup.App.Term. 1997)

[5]If a person is convicted of an "impaired" alcohol offense while operating a motor vehicle on a probationary license, such license is suspended for 60 days (mandatory). V&T Law §510-b(1)

Special Note: I. A person under 21 yrs old, who is convicted of any alcohol driving offense shall for a 1st offense have their license revoked for 1 year and for a subsequent offense revocation for 1 year or until they reach 21 which ever is the greater period of time. A conditional license is not available even if the offender participates in an alcohol rehabilitation program. V&T Law §1193(2)(b)(6), (7) & (9) II. In addition to the licensing sanctions given, V&T Law §510(2)(b)(v) provides for a 6 mo susp for persons who have been convicted (1st or sub off) of violating V&T law §1192(4) (driving while their ability is impaired by certain defined drugs).

Sanctions Following a Conviction for a DWI Offense:
(continued)

	I. (continued) of any type or w/n 10 yrs of 2 alc driving offs of any type)-**Rev** II. Per se and intoxicated offs[1]-1st off-**Rev**; 2nd and any subsequent offs (w/n 10 yrs)-**Rev** V&T Law §1193(2) See Footnote No. 2.
Term of License Withdrawal (Days, Months, Years, etc.):	I. "Impaired" alcohol status offs-1st off-**90 dys**; Sub off (w/n 5 yrs of 1 alcohol driving off of any type or w/n 10 yrs of 2 alc driving offs of any type)-**6 mos** II. Per se and intoxicated offs[1]-1st off-At least **6 mos**; 2nd and any subsequent offs (w/n 10 yrs)-At least **1 yr** V&T Law §1193(2)(a) & (b)
Mandatory Minimum Term of Withdrawal:	I. "Impaired" alcohol status offs-Sub off (w/n 5 yrs of 1 alcohol driving off of any type or w/n 10 yrs of 2 alc driving offs of any type)-**6 mos** II. Per se and intoxicated offs[1]-2nd and any subsequent offs (w/n 10 yrs)-**1 yr**[3] V&T Law §1193(2)(a) & (b) See Footnote No. 4.
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** for all offs V&T Law §1196
Alcohol Treatment:	**Yes** for all offs V&T Law §1196
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Forfeiture.** A defendant's vehicle may be subject to forfeiture if they have been convicted of a felony drunk driving offense (e.g., a second or subsequent Per Se or Intoxicated offense w/n 10 yrs). This sanction is not mandatory. Civil Practice Law & Rules §§1301(5) & 1311(1)(a) and *Holtzman v. Bailey,* 503 N.Y.S.2d 473 (Sup. 1986)
Terms Upon Which Vehicle Will Be Released:	**N/A**
Other:	**Registration Suspension/Revocation.** The registration of a defendant's vehicle may be susp/rev. Registration susp/rev periods are the same as the license susp/rev periods for DWI offense convictions. Applies also to persons under 21 years old. See the Special Note below. V&T Law §1193(2)(a) & (b)

[1]Also includes driving while impaired by drugs under V&T Law §1192(4).
[2]A bus operator (including school bus operator) is disqualified from operating a bus for 5 yrs if they (1) are convicted of operating a bus in violation of any provision of the drunk driving laws or (2) have been convicted to two such offenses while operating any other type of vehicle. V&T Law §§509-c & 509-cc
[3]Under V&T Law §1193(2)(c), if a person is convicted of two (2) violations of either driving while intoxicated or driving while impaired by drugs (V&T Law §1192(3) & (4)) where a personal injury has resulted in each offense, their license is permanently revoked.
[4]A person may be issued a conditional license while participating in a rehabilitation program. However, a person is not permitted to take part in such a program and obtain a conditional license (1) if, they have participated in such a program w/n a five yr period or (2) if they have been convicted of a subsequent alcohol driving offense w/n 5 yrs. Successful completion of the program shall satisfy any sentence of imprisonment and allow an offender to apply for reinstatement of his/her driver's license. V&T Law §1196(4) & (7)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions Not Included Elsewhere:	**Victim Impact Program.** A defendant may be required to attend a "victim impact program". This program consists of a single session in which prior DWI offenders discuss the impact that such an offense has had on them. V&T Law §1193(f) **Civil Penalty.** A person <21 yrs old, who has had their license susp/rev for driving "after having consumed alcohol," is liable for a civil penalty of **$125**. V&T Law §1194-a(2) **Probation.** A defendant may be placed on probation with conditions provided such conditions are related to the offender's rehabilitation.[1] Penal Law §65.10(2)(*l*)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Vehicle Manslaughter in the 2nd degree-Cl D felony Death of another based on criminally negligent action while in violation of the DWI laws. Penal Law §125.12 See Footnote No. 2.
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **7 yrs** Penal Law §70.00(2)(d)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$5,000** Penal Law §80.00(1)(a)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** V&T Law §510(2)(a)(i)
Length of Term of Licensing Withdrawal:	At least **6 mos** V&T Law §510(6)
Mandatory Action--Minimum Length of License Withdrawal:	**6 mos** V&T Law §510(6)
Other:	**Special Note:** Persons convicted of either 1st or 2nd degree Vehicle Manslaughter are not eligible for the shock incarceration program. Correction Law §§865(1), 866 & 867
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote Nos. 2 & 3.

[1]**Important.** Unless related to rehabilitation, a court cannot as a condition of probation, without specific statutory authority, (1) require a DWI defendant to affix to the license plates of the vehicles they operate a sign that states that they have been convicted of a drunk driving offense or (2) place such a defendant on "electronic monitoring". *People v. Letterlough,* 655 N.E.2d 146 (N.Y. 1995), & *People v. McNair,* 665 N.E.2d 167 (N.Y. 1996)

[2]If a person kills another while operating a motor vehicle while their license is either suspended or revoked for either an alcohol or a drug related driving offense or for refusal to submit to a chemical test, they have committed Vehicle Manslaughter in the 1st degree which is a Class C Felony. The sanctions for this offense are a jail sentence of not more than 15 yrs and/or a fine of not more than $5,000. Penal Law §§70.00(2)(c), 80.00(1)(a) & 125.13

[3]If a person operates a CMV during either the suspension or revocation of their CDL, they appear to be subject the sanctions given in V&T Law §511. Also, if a person violates an out-of-service order, their CDL is suspended for 90 dys. V&T Law §510-a(3)(d)

Other Criminal Actions Related to DWI: (continued)

Sanction:	
Criminal:	
Imprisonment (Term):	**Misd 7 to 180 dys** V&T Law §511(2)(a)(iii) & (2)(b) See Footnote Nos. 1,2 & 3.
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$500 to $1,000** V&T Law §511(2)(b)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**None**
Length of Term of License Withdrawal Action:	
Mandatory Term of License Withdrawal Action:	
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

[1]Aggravated unlicensed operation of a motor vehicle in the second degree. As a condition of probation, the court may require a defendant to participate in an either alcohol or drug treatment program. V&T Law §511(2)(b) & (6) Also, under V&T §511-b, for a 1st or 2nd offense, the vehicle used in the offense may be impounded; the vehicle may be "redeemed" to a person who has furnished satisfactory evidence of registration and financial security.

[2]A person, who operates a motor vehicle while DWI and while their license has either been suspended or revoked for a previous DWI conviction, commits the offense of aggravated unlicensed operation of a motor vehicle in the first degree which is a Class E Felony and they are subject to the following sanctions: Imprisonment-Not more than 4 yrs; fine-$500 to $5,000. As a condition of probation, the court may require a defendant to participate in either an alcohol or a drug treatment program. V&T Law §511(3) & (6) and Penal Code §70.00(2)(e) The defendant's vehicle may also be subject to forfeiture. Civil Practice Law and Rules §§1310(5) and 1311(1)(a)

[3]Note: A person, who operates a motor vehicle following either suspension or revocation not associated with a drunk driving offense, is guilty of the misd offense of aggravated unlicensed operating of a motor vehicle in the third degree. The sanctions for this offense are an imprisonment term of not more than 30 dys and/or a fine of $200 to $500 ($500 to $1,500 if the offender was operating a vehicle weighing more than >18,000 lbs). V&T Law §511(1)

Other State Laws Related To Alcohol Use

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** N.Y. County Law §674(3)(b)[1]
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** (If 16 yrs or older)
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[2] (Year Eff: 1985) Alcoholic Beverage Control Law §§65, 65-b & 82 and Penal Law §260.20(2)
Minimum Age (Years) Possession:	**21**[3]
Minimum Age (Years) Consumption:	**21**[3]
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** N.Y. Gen. Oblig. Law §§11-100 & 11-101[4]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** However, see *Berkeley v. Park,* 262 N.Y.S. 2d 290 (Sup. 1965), a trial court opinion.
Dram Shop Actions-Social Hosts:	**Limited** Liability in situations where a person <21 yrs old is served alcoholic beverages.[5&6] N.Y. Gen. Oblig. Law §11-100
Other:	In general, a provider of alcoholic beverages is not liable for the injuries sustained by a intoxicated patron (even a minor) due to their voluntary consumption of alcohol. *Sheehy v. Big Flats Community Day, Inc.,* 541 N.E.2d 18 (N.Y. 1989) However, if such consumption was "imposed" on a person (e.g., via hazing to join a fraternity), liability may result. *Oja v. Grand Chapter of Theta Chi Frat.,* 667 N.Y.S.2d 650 (Sup. 1997)

[1]The test shall not be made if there is reason to believe that the decedent is of a religious faith which is opposed to such test on religious or moral grounds. N.Y. County Law §674(3)(b)

[2]It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to use "written evidence" of their age which is "false" or "fraudulent" in order to obtain alcoholic beverages. Alcoholic Beverage Control Law §65-b

[3]Unlawful possession with intent to consume by persons under 21 years old. Alcohol Beverage Control Law §65-c Exceptions: (1) Either a person under 21 yrs old is required as part of an educational curriculum to consume/taste alcoholic beverages or (2) such person has been provided alcoholic beverages by a parent/guardian.

[4]Under the dram shop law, a licensee, who serves alcoholic beverages to a minor child to the point of intoxication, is liable to the child's parents for any injures sustained by the minor while in such an intoxicated condition. *Ray v. Galloway's Cafe,* 634 N.Y.S.2d 495 (A.D. 2 Dept. 1995)

[5]Under N.Y. Gen. Oblig. Law §11-100, a social host, who unlawfully procures alcoholic beverages for consumption by an underage person, may be held liable for any damages caused by such person who became intoxicated as a result of such consumption. *Cole v. O'Tooles of Utica, Inc.,* 643 N.Y.S.2d 283 (A.D. 4 Dept. 1996). Also, a home owner, who was not at home when and who had no knowledge that alcoholic beverages were being served to an underage person, can be held liable for any damages caused by such person who became intoxicated as a result of such consumption. *Rust v. Reyer,* 693 N.E.2d 1074 (N.Y. 1998)

[6]The court found no social host liability at a party given by a business where alc. bevs. were furnished to an adult guest who caused injuries as a result of becoming intoxicated at the party. *Joly v. Northway Motor Car Corp.,* 517 N.Y.S.2d 595 (A.D. 3 Dept. 1987)

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Class A Misd** §§65 & 130(5) of the Alcoholic Beverage Control Law and §§55.10(2)(b), 70.15(1) and 80.05(1) of the Penal Law
Term of Imprisonment:	**Not more than 1 yr**
Fine ($ Range):	**Not more than $1,000** (For corporations, the fine is not more than $5,000.) §80.10(1)(b) of the Penal Law
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Susp, canceled, or rev Alc. Beverage Control Law §17(3)
Length of Term of License Withdrawal:	Not specified in the statute
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Class A Misd**[1&2] §§65 & 130 of the Alcoholic Beverage Control Law and §§55.10(2)(b), 70.15(1), 70.15(2), 80.05(1), 80.05(2), 80.10(1)(b), 80.10(1)(c) & 260.20 of the Penal Law
Term of Imprisonment:	Not more than **1 yr**
Fine ($ Range):	Not more than **$1,000**[3] (Not more than $5,000 for corporations)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Susp, canceled, or rev Alc. Beverage Control Law §17(3)
Length of Term License Withdrawal:	Not specified in the statute
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes**[4] Driver and passengers V&T Law §1227
Anti-Consumption Law (Yes/No):	**Yes**[4] Driver and passengers V&T Law §1227

[1]Penal Law §260.20(4), concerning the selling or giving of alcoholic beverages to a person under 21 years old, does not apply to the parent or guardian of such a person.
[2]Under N.Y. law, there are two provisions making it illegal to sell alcoholic beverages to persons under 21 years old. One is in the Alcoholic Beverage Control Law (§65). The other is in the Penal Law (§260.20).
[3]For a 2nd or sub off (w/n 5 yrs), there is a civil penalty of not more than **$500**. Alcoholic Beverage Control Law §119(5)
[4]Does not apply to vehicles operating under certain certificates or permits issued by the U.S. Department of Transportation. V&T Law §1227

STATE:	**NORTH CAROLINA**
General Reference:	General Statutes of North Carolina

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an impairing substance[1] §§20-4-4.01(14a) & 20-138.1(a)(1)
Illegal Per Se Law (BAC/BrAC):	≥**0.08**[2&3] §§20-4.01(0.2) & 20-138.1(a)(2) **Persons Under 21 Years Old.** Any alcohol in the body or a controlled substance in the blood[4] §20-138.3.
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of **Any Impairing Substance**[1] §§20-4.01(14a) & 20-138.1(a)(1)
Other:	Important. See Footnote No. 5 on p. 3-358 concerning vehicle operation with an open container of alcoholic beverages and "while the driver is consuming alcohol or while alcohol remains in the driver's body". For Commercial Motor Vehicle Operators, see p. 3-350. For School Bus and Child Care Veh. Operators, see p. 3-352.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes**[5] §§20-16.2(i), 20-16.3 & 20-138.3(d)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[5&6] §20-16.2(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes**[7] §§20-16.2(a) & (a1) and 20-139.1 Note: Sec. 20-139.1 only applies to procedures governing chemical tests for alcohol concentration.
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §20-16.2(a)(3)
Other Information:	Under the implied consent law, if a person refuses to submit to a chemical test, none shall be given. However, the statute allows a law enforcement officer to obtain a test via other lawful procedures. As a result, a person may be required (forced) to submit to a chemical test. §20-16.2(c)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes**[7]
Urine:	**Yes**[7]
Other:	**Yes**[7]

[1]The term "impairing substance" means either alcohol, a controlled substance (under Ch. 20), any other drug or psychoactive substance. §20-4.01(14a)
[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.
[3]Alcohol concentration means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §20-4.01(0.2)
[4]**Special Note:** This law does not apply in situations where the controlled substance was lawfully obtained and is taken in therapeutically appropriate amounts. For details, see Persons Under 21 Years old on p. 3-353.
[5]The preliminary breath test and implied consent laws also apply to offenses committed under §§20-138.3 and 20-138.7. See Footnote No. 5 on p. 3-358.
[6]Arrest or if criminal process for the DWI offense has been issued. §20-16.2(a1)
[7]A law enforcement officer shall "designate the type of chemical analysis to be administered". §20-16.2(a) & (b) **Comment.** This could include obtaining a sample of either blood, breath, urine or other bodily substance for testing.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No** However, the law does require the prosecutor to explain a reduction or dismissal of a DWI charge. §20-138.4
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes**[1] §§20-179(f), (h), (i), (j), (k) & (m) and 20-179.1

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**No**
Administrative Licensing Action (Susp/Rev):	**No**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**Rev 12 mos**[2] (with 30 dy[2&3] immediate license revocation) §§20-16.2(d) & 20-16.5[4]

[1]A person is eligible for restricted driving privileges, if complete substance abuse assessment. §20-179.3(b)(1)(e)

[2]**Limited License.** There are two types of limited licenses that are available. I. A limited driving privilege license may be issued after 6 mos of the rev period have passed provided the driver either (1) has not had a previous chemical test refusal (w/n 7 yrs), (2) has not had a previous DWI offense conviction (w/n 7 yrs) or has not been charged with a DWI offense that involved either death or critical injury to another person. §20-16.2(e1) II. Under separate provisions, limited driving privileges may also be granted after **10 dys** if the person does not have a conviction for an offense involving "impaired driving" and they agree to participate in a substance abuse training or treatment program. §20-16.5(p)

[3]If the driver is late in surrendering or does not surrender their license to the court when ordered to do so, the immediate revocation period is 45 dys. §20-16.5(f) Limited driving privileges may be granted after **30 dys** if the person does not have a conviction for an offense involving "impaired driving" and they agree to participate in a substance abuse training or treatment program. §20-16.5(p)

[4]For persons <21 years old a rev for 1 yr (mandatory). This rev is in addition to and runs concurrently with any other licensing action authorized by law for an implied consent law violation. §§20-4.01(31a) & 20-13.2

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): I. A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (See Footnote No. 3 on p. 3-349.), (2) are under the influence of an impairing substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand but for 3rd refusal disqualification for life is mand) II. It is a Class 1 misdemeanor to operate a CMV (1) while appreciably under the influence of an impairing substance or (2) with a BAC/BrAC ≥0.04. The sanctions for this offense are jail from 1 to 120 dys (Note: The length of the imprisonment term is determined in part by the number of prior criminal convictions.) and a fine the amount of which is discretionary with the court. An offender is also subject to the same licensing sanctions as would any other drunk driving law offender. See Post DWI Conviction Licensing Action on pp. 3-352 and 3-353. However, for a 3rd off there is disqualification for life (mand). If the court requires an offender to complete either an alcohol education or treatment program, this program must be completed before their CMV driving privileges can be restored. III. The State has adopted by reference the "out-of-service" provisions of 49 CFR §§392.5 & 395.13. These provisions provide, among other things, that a CMV operator be place "out-of-service" for 24 hrs, if by general appearance or conduct, it appears the operator has consumed intoxicating beverages with the preceding 4 hrs. IV. Driving a CMV with a BAC/BrAC >0.00 but <0.04: 1st off (Cl 3 misd)-$100 fine and disqualification for 10 dys (mand); 2nd or sub off (w/n 7 yrs) (misd)-Same criminal sanctions as for a DWI off and CDL disqualification and regular license rev for 1 yr (mand). An offender must have alc education/treatment prior to re-licensing. But, for a 4th off CDL disqualification is for life (mand). §§15-1340.23, 20-4.01(0.2), (3d), (5a), (14a), (24a) & (25a), 20-17(2), 20-17.4(a), (a1), (b), (b1) & (6), 20-17.6, 20-19(f), 20-37.12, 20-138.2, 20-138.2A and 20-179

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See (1) the Special Note and Double Jeopardy below and (2) Persons Under 21 Years Old on p. 3-353.
Imprisonment: Term (Day, Month, Years, Etc.):	Level 1 Punishment-**30 dys-24 mos**; Level 2 Punishment-**7 dys-12 mos**; Level 3 Punishment-**72 hrs-6 mos**[1]; Level 4 Punishment-**48 hrs-120 dys**[1]; Level 5 Punishment-**24 hrs to 60 dys**[1] §20-179 See Footnote No. 2 below and the Special Note on p. 3-352. 4th off or sub. off (w/n 7 yrs) (Habitual Impaired Driving) (Class F Felony)-≤**59 mos**[3] §20-138.5
Mandatory Minimum Term:	Level 1 Punishment-**14 dys**[2]; Level 2 Punishment-**7 dys**[2] See the Special Note on p. 3-352. §20-179(g) & (h) 4th off or sub. off (w/n 7 yrs) (Habitual Impaired Driving) (Class F Felony)-**None**[3] §20-138.5
Fine: Amount ($ Range):	Level 1 Punishment-Not more than **$4,000**; Level 2 Punishment-Not more than **$2,000**; Level 3 Punishment-Not more than **$1,000**; Level 4 Punishment-Not more than **$500**; Level 5 Punishment-Not more than **$200** §20-179 4th off or sub. off (w/n 7 yrs) (Habitual Impaired Driving) (Class F Felony)-Fines are authorized but are not specified in the statute.[3] §20-138.5.
Mandatory Min. Fine ($):	**None**
Other Penalties: Community Service:	Level 3 Punishment-**72 hrs**; Level 4 Punishment-**48 hrs**; Level 5 Punishment-**24 hrs** See Footnote No. 1. §20-179

[1]The term of imprisonment may be suspended on the condition that the defendant either (1) serve the minimum term of imprisonment as a special condition of probation, or (2) perform the indicated community service, or (3) have their license withdrawn for the period of time shown under Post-DWI Conviction Licensing Action or (4) any combination of the above.
[2]For DWI offenses where sentencing is authorized under §20-179, the court, at its discretion, may order that either the term of imprisonment or community service be served on weekends. The court is authorized to impose this type of sentence even if the sentence cannot be served consecutively. §20-179(s)
[3]The sanctions for Habitual Impaired Driving are an imprisonment term of up to 59 mos and a fine. The length of the imprisonment term is determined by the number of prior criminal convictions and by aggravating and mitigating circumstances. The fine amount is discretionary with the court. §§15A-1340.14, 15A-1340.16 & 15A-1340.17

Special Note: The level of punishment to be given a DWI offender is determined by weighing the aggravating and mitigating factors as specified in §20-179(d) & (e). However, the court must impose level 2 punishment (§20-179(h)) if (1) there has been a previous DWI conviction w/n a 7 yr period, (2) there has been a "serious injury" related to a DWI offense or (3) there was a child under 16 years old riding with the offender (**child endangerment**). The court must impose Level 1 punishment (§20-179(g)) if there has been two previous DWI offense convictions w/n 7 yrs (i.e., for a 3rd DWI offense). The court must also impose Level 1 punishment (§20-179(g)) if any two or more of the following conditions exist: (1) The defendant has a previous DWI offense conviction w/n 7 yrs of the offense charged; (2) the defendant at the time of the offense was driving on a revoked license where such revocation was based on a previous DWI offense conviction; (3) the present offense resulted in a "serious injury"; or (4) there was a child under 16 years old riding with the offender (**child endangerment**). §20-179(c)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Oliver,* 470 S.E.2d 16 (N.C. 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Restitution (eg Victim's Fund)	**Yes** (1) Direct compensation by the defendant to a victim (§15B-24) (2) Also via a victims' compensation fund (§15B-1 st seq See especially §15B-2(5).)
Other:	**House Arrest.** For either Level 1 or Level 2 Punishment, "house arrest" may be authorized in lieu of part of the mandatory term of imprisonment. §20-179(g) & (h). **Community Service Fee.** Offenders, who participate in community service, are assessed a fee of $100. §20-179.4(c)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-351 and Due Process of Law below.
Administrative Per Se Law:	**Yes** ≥**0.08 (>0.00 for Persons Under 21 Years Old) BAC/BrAC**[1&2] **Rev** for **30 dys**[3] §20-16.5(b) & (1b) Note: If the driver is late in surrendering or does not surrender their license to the court when ordered to do so, the rev period is 45 dys.[3] §20-16.5(f) In addition, if the driver has a pending drunk driving offense at the time current one, their license is revoked for the present offense until a final judgement (including all appeals) have become final.[3] §20-16.5(e) & (f)
Other:	**None**
Post DWI Conviction Licensing Action:	See Persons Under 21 Years Old on p. 3-353.
Type of Licensing Action (Susp/Rev):	1st off-**Rev**; 2nd off (w/n 3 yrs)-**Rev**; 3rd off (where the 2nd off was w/n 5 yrs of the 3rd)-**Rev** §§20-17, 20-19 & 20-179 4th or sub. off (w/n 7 yrs)-**Rev** §20-138.5 Important: An offender, who is required to participate in either an alcohol education or treatment program, must complete such program before their license can be restored. §§20-17.6 & 122C-142.1

[1]See Footnote No. 3 on p. 3-349.
[2]For commercial motor vehicle operators, if the BAC/BrAC is ≥**0.04**. §20-16.5
[3]**Mandatory Licensing Action & Limited Driving Privileges.** Limited driving privileges may be granted after **10 dys** (after 30 dys for a 45 dy revocation) if the person does not have a conviction for an offense involving "impaired driving" and they agree to participate in a substance abuse training or treatment program. For revocations pending final judgement, limited driving privileges may be granted after **30 dys** (after 45 dys if the license was not surrendered to the court). §20-16.5(p)

School Bus, School Activity Bus or Child Care Vehicle Operators. It is illegal to operate either a school bus, a school activity or a child care vehicle with a BAC/BrAC >0.00. 1st off (Cl 3 misd)-$100 fine and license susp for 10 day (and). 2nd or sub off (w/n 7 yrs)-Same criminal sanctions as for a regular drunk driving offense and license revocation for 1 yr. A person must compete either an alcohol education or treatment program prior to re-licensing. §§20-17(a)(14), 20-17.6, 20-19(2), 20-138.2B & 20-179

Due Process of Law. The administrative per se law does not violate a person's constitutional right to due process of law. *Henry v. Edmisten,* 340 S.E.2d 720 (N.C. 1986)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.):	See the Special Note on p. 3-352. 1st off-**1 yr**[1&2]; 2nd off-**4 yrs**; 3rd off (where the 2nd off was w/n 5 yrs of the 3rd)-**Permanent**; 4th or sub. off (w/n 7 yrs)-**Permanent** §§20-19(c1), (d) & (e) and 20-138.5
Mandatory Minimum Term of Withdrawal:	1st off-**None**; 2nd off-**2 yrs** (After 2 yrs, a conditional license may be issued); 3rd off- **3 yrs** (After 3 yrs, a conditional license may be issued); 4th or sub. off (w/n 7 yrs)-**Permanent** §§20-19(d) & (e) and 20-138.5
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** §20-179(g), (h), (i), (j) & (k) See Alcohol Education below.
Alcohol Treatment:	**Yes** I. Offenders, regardless of the level of punishment, who are placed of probation, are required to participate in either an alcohol education or treatment program.[3] §20-179(g), (h), (i), (j) & (k) II. Under §20-179.1, treatment may be order by the court as a condition of probation. III. Under §29-179(k1), the court may order that a term of imprisonment imposed as a condition of probation be served in an inpatient alcohol treatment facility.

[1]Under §20-179.3, limited driving privileges may be granted for essential purposes as specified in this section (e.g., employment) provided a driver has not had either a previous conviction w/n 7 yrs or a previous DWI injury related conviction and is subject to only levels 3, 4 or 5 punishment. See Ignition Interlock on p. 3-354. This privilege is not effective until after the court ordered license withdrawal period, if any, has been completed as a part of probation requirements. See Footnote No. 2.

[2]If a 1st offender is subject to either Levels 3, 4 or 5 Punishments and the court grants them probation under §20-179, the court may impose as a condition of such probation that the person not operate a motor vehicle for the following periods of time: Level 3 Punishment-**90 dys**; Level 4 Punishment-**60 dys**; and, Level 5 Punishment-**30 dys**. Under §20-17.2, if the court orders these licensing actions they must be imposed by the State licensing agency. **Comment:** The law is not clear whether these court ordered licensing actions replace the 1 yr revocation period per §§20-17(2) and 20-19(c1).

[3]As part of the conditions for probation, the offender must participate in either alcohol education or treatment before their driving privileges can be restored. §20-179(g), (h), (i), (j) & (k)

Persons Under 21 Years Old: I. It is Cl 2 Misd for persons under 21 yrs old to operate a motor vehicle with any alcohol or controlled substance ("unless lawfully obtained and taken in therapeutically appropriate amounts") in the body but where such amount would not result in a normal DWI charge and conviction. The sanctions for this offense are a jail term of 1 to 60 dys and/or a fine of not more than $1,000 The length of the imprisonment term is determined in part by the number of prior criminal convictions. An offender is also subject to rev for 1 yr. First offenders, who are 18, 19 or 20 yrs old, may receive limited driving privileges. See Ignition Interlock on p. 3-354. However, such revocation is mandatory for subsequent offenses. §§20-13.2, 20-138.3, 20-176(c) & 15A-1340.23 II. Persons <21 yrs old, who are convicted of a regular drunk driving offense, are subject to a rev for 1 yr plus a regular DWI rev. These revs, however, are to run concurrently. §§20-4.01(31a) & 20-13.2 **Comment:** The law is not clear, but a 1st offender may be eligible for limited driving privileges. §20-179.3 See Ignition Interlock on p. 3-354. III. Note: A person convicted under I above, a §20-138.3 offense, may also be convicted of a regular DWI offense (§20-138.1). I.e., a §20-138.3 offense is not a lesser included offense under §20-138.1. However, the aggregate punishment that can be imposed cannot exceed the maximum punishment for a DWI offense (§20-138.1). §20-138.3(c)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**None**
Terms Upon Which Vehicle Will Be Released:	
Other:	**Limited Forfeiture.** A vehicle (whether or not owned by the driver) is subject to forfeiture (which appears to be mandatory) if the driver was driving such vehicle (1) while in violation of the drunk driving laws and (2) while their license is still in a revocation status for either (1) a previous drunk driving conviction, (2) implied consent refusal, (2) admin. per se action or (4) other license revocation related alcohol.[1] §20-28.2(b) **Special Note:** Certain innocent parties, who have an ownership interest in the vehicle, or a lien holder may have the vehicle released to them. §§20-28.2(d) & (e) and 20-28.5
Miscellaneous Sanctions Not Included Elsewhere:	**Ignition Interlock.** A person, who is eligible for restricted driving privileges, may be required only to operate motor vehicles that are equipped with an ignition interlock device. This does not apply to vehicles which (1) used by the person during employment and (1) owned by the employer. §20-179.3(g3) **Vehicle Registration Revocation.** Except for certain innocent owners, the registrations of all of the vehicles that are owned by a person are revoked (until their license is restored) if they have been convicted for a drunk driving offense while their license is still in a revocation status for either (1) a previous drunk driving conviction, (2) implied consent refusal, (2) admin. per se action or (4) any other license revocation related alcohol. In addition, such a person cannot register a recently purchased/obtained motor vehicle until their driving privileges are restored. §20-54.1

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Death by Vehicle I. **Class G Felony** if death is DWI related[2] §20-141.4 II. **Class 1 Misd** if death is not DWI related §20-141.4
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	I. Class G Felony-**8 to 36 mos**[3] §15A-1340.17 II. Class 1 Misd-**1 to 120 dys**[4] §15A-1340.23
Mandatory Minimum Term:	**None**
Fine ($ Range):	I. Class G Felony-The fine amount is discretionary with the court. §15A-1340.17

[1]A vehicle that is subject to forfeiture is also subject, at the time of the violation, to seizure by law enforcement officers. §20-28.3
[2]Includes deaths that are related to CMV operation while in violation of §20-138.2.
[3]The length of the imprisonment term is determined by the number of prior criminal convictions and by aggravating and mitigating circumstances. §§15A-1340.14, 15A-1340.16 & 15A-1340.17
[4]The length of the imprisonment term is determined in part by the number of prior criminal convictions.

Other Criminal Actions Related to DWI: (continued)

Fine ($ Range): (continued)	II. Class 1 Misd-The fine amount is discretionary with the court. §15A-1340.23
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev**
Length of Term of Licensing Withdrawal:	**1 yr** unless the trial judge issues a limited driving privileges to the person convicted containing a condition that the defendant successfully complete a course of instruction at an Alcohol Drug Education Traffic School. If the defendant complies with these conditions, their license must be restored within **6 mos.** §§20-17(1) & 29-19(c) See Ignition Interlock on p. 3-354.
Mandatory Action--Minimum Length of License Withdrawal:	**None**
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See the Special Note below. See Vehicle Impoundment/Confiscation and Vehicle Registration Prohibition on p. 3-354.
Sanction:	
Criminal:	
Imprisonment (Term):	Driving While Revoked-**Class 1 Misd-1 to 120 dys**[1] §§20-28(a) & (b) and 15A-1340.23
Mandatory Minimum Term of Imprisonment:	If a person's license has been permanently revoked and they thereafter drive, **30 dys** §20-28(b)
Fine ($ Range)	Class 1 Misd-The fine amount is discretionary with the court. §15A-1340.23
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Rev**
Length of Term of License Withdrawal Action:	1st off-**1 yr** (90 dys mand) rev added to original rev period; 2nd off-**2 yrs** (12 mos mand) rev added to original rev period; 3rd off-**Permanent rev** (3 yrs mand) §§20-28(a) & (c)

[1]The length of the imprisonment term is determined in part by the number of prior criminal convictions. Community service is also authorized for misdemeanor offenses. §15A-1340.23(c)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: I. It is a Cl 1 misd (See the imprisonment and fine sanctions for this type of misd and Footnote No. 1 above.) to operate a CMV during a CDL disqualification. For a 1st offense, there is an additional disqualification for a period equal to the original disqualification. For a 2nd offense, there is an additional disqualification for a period equal to twice the original disqualification. And, for a subsequent offense, disqualification for life. §§20-28(d) II. It is a Cl 3 misd to operate a CMV while under a CDL out-of-service order. For a 1st or subsequent offense, an offender is subject to an imprisonment term of 1 to 20 dys (See Footnote No. 1 above.). For a 1st offense, an offender is subject a fine of not less than $250. And, for a subsequent offense, an offender is subject a fine of not less than $500. §§15A-1340.23(c), 20-37.12(b) & 20-37.21(a)

Other Criminal Actions Related to DWI: (continued)

Mandatory Term of License Withdrawal Action:	1st off-**90 dys**; 2nd off-**12 mos**; 3rd off-**3 yrs** (The licensing agency may issue a new license with or without conditions after these terms of license withdrawal.) §§20-28(c) **Special Note:** If a person is convicted of a DWI off and they were at the time of such off driving while their license was revoked for a previous DWI off conviction (w/n 7 yrs), the Court must impose Level 1 punishment. §20-179(c) See Levels of Punishment on p. 3-351.
Habitual Traffic Offender Law: State Has Such a Law (Yes/No):	**No** Note: The Habitual Traffic Offender Law, §§20-220 to 20-231, was repealed by Session Laws 1977, Ch. 243, §1.
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal off if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1986) §§18B-302(a) & (b)
Minimum Age (Years) Possession:	**21** §§18B-301(f)(4) & 18B-302(b) Employment exemption
Minimum Age (Years) Consumption:	**21** §18B-301(f)(4)

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** §§18B-120 et seq.[1] Note: The law limits recovery to $500,000.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Hutchens v. Hankins,* 303 S.E.2d 584 (N.C. App. 1983) (discretionary review denied by the North Carolina Supreme Court 305 S.E.2d 734 (N.C. 1983)), *Freeman v. Finney,* 309 S.E.2d 531 (N.C.App. 1983) (discretionary review denied by the North Carolina Supreme Court 315 S.E.2d 702 (N.C. 1984)), & *Chastain v. Litton Systems, Inc.,* 694 F.2d 957 (CA4, 1982) (cert. den., 462 U.S. 1106 (1983))
Dram Shop Actions-Social Hosts:	**Yes** Under general negligence principles of common law, a social host may be held liable for the injuries caused by intoxicated guests. *Hart v. Ivey,* 420 S.E.2d 174 (N.C. 1992) **Comment:** Although the *Hart* case concerned injuries caused by intoxicated minors, language by the court indicates that liability could also result from injuries caused by intoxicated adult guests.
Other:	A licensee is not liable for the injuries sustained by an intoxicated patron. *Sorrells v. M.Y.B. Hospitality Ventures,* 423 S.E.2d 72 (N.C. 1992)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:	**Class 1 Misd** §§18B-102 & 18B-305
Term of Imprisonment:	**1 to 120 dys** The length of the imprisonment term is determined in part by the number of prior criminal convictions. §15A-1340.23
Fine ($ Range):	The amount of the fine sanction for this type of misdemeanor is discretionary with the court. §15A-1340.23 See Footnote No. 2.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Left to the Board's discretion as to whether to suspend or to revoke. §§18B-104 & 18B-305 See Footnote No. 1 on p. 3-358.
Length of Term of License Withdrawal:	**Susp**-Not more than **3 yrs** **Rev** period is not specified in the statute.

[1]These statutory provisions create a Dram Shop type of liability in situations involving minors (those persons under 19 yrs old) who cause damages while DWI. The law places limitations on damage amounts which can be awarded in such actions. However, the law specifically does not limit or prohibit Dram Shop actions based either on other statutes or on "common law". Note: A person (or the estate of a person) injured (killed) via the actions of an intoxicated individual is generally not entitled to recover damages for such injures (death) if the injured (dead) person "aided or abetted" the intoxicated individual by purchasing alcoholic beverages for them. *Estate of Darby v. Monroe Oil Co., Inc.,* 488 S.E.2d 828 (N.C.App. 1997)

[2]The following administrative fines may also be imposed on a permittee: 1st off-up to $500; 2nd off-up to $750; 3rd off-up to $1,000. §18B-104

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Class 1 Misd** §§18B-102 & 18B-302
Term of Imprisonment:	**1 to 120 dys** The length of the imprisonment term is determined in part by the number of prior criminal convictions. §15A-1340.23
Fine ($ Range):	The amount of the fine sanction for this type of misdemeanor is discretionary with the court. §15A-1340.23 See Footnote No. 2.
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes**[1] Left to the Board's discretion as to whether to suspend or to revoke. §§18b-104 & 18B-302
Length of Term License Withdrawal:	**Susp**-Not more than **3 yrs** **Rev** period is not specified in the statute.
Anti-Happy Hour Laws/Regulations:	**Yes** (Regulation) T04: 02S.0200[3]
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes**[4] §§18B-401(a) & 20-138.7[5]
Anti-Consumption Law (Yes/No):	**Yes**[4] Driver only §18B-401(a) & 20-138.7[5]

[1]In lieu of either suspension or revocation, the permittee may agree to pay a penalty of not more than $5,000. §18B-104

[2]The following administrative fines may also be imposed on a permittee: 1st off-up to $500; 2nd off-up to $750; 3rd off-up to $1,000. §18B-104

[3]North Carolina Administrative Code

[4]The law states that "it shall be unlawful for a person to transport fortified wine or spiritous liquor in the passenger area of a motor veh in other than the manufacturer's unopened original container. It shall be unlawful for a person who is driving a motor veh on a highway or public veh area to consume in the passenger area of that veh any malt beverage or unfortified wine."

[5]Sec. 20-138.7 makes it an offense to operate a motor vehicle with an open container of alcoholic beverages in a vehicle's passenger area and "while the driver is consuming alcohol or while alcohol remains in the driver's body". A 1st offense is a Class 3 misd (jail-1 to 20 dys and/or a fine-not more than $200). A 2nd or subsequent offense is a Class 2 misd (jail-1 to 60 dys and/or a fine-not more than $1,000). Jail term length is determined by the number of prior convictions. Even thought there is no licensing action against a 1st offender, a 2nd offender is subject to a 6 mo license revocation and a 3rd or subsequent offender is subject to a 1 yr license revocation. Second or subsequent offenders are eligible for restricted driving privileges provided they have do not have a prior drunk driving offense conviction. See Ignition Interlock on p. 3-354. §§15A-1340.23(b) & (c), 20-17(12), 20-19(g1) and 20-138.7

STATE:	**NORTH DAKOTA**
General Reference:	North Dakota Century Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor[1] §39-08-01(1)(b)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[2&3] §§39-08-01(1)(a) and 39-20-07(3) & (4)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug or Substance**, (2) Any Combination of Drugs or Substances and (3) a Combination of Intoxicating Liquor and Any Drug or Substance §39-08-01(1)(c) & (d)
Other:	A person is considered to be "under the influence of intoxicating liquor" if they have an alcohol concentration of at least 0.10 (if under, 21 yrs old, this level is at least 0.02)[3&4] §39-20-07(3) For Commercial Motor Vehicle Operators, see p. 3-361

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes**[5] §39-20-14
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §39-20-01
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §39-20-01
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) §39-20-08 & *State v. Murphy,* 527 N.W.2d 254 (N.D. 1995)[6]
Other Information:	In any accident in which there is either a death or a serious bodily injury and there is probable cause showing that a driver has committed any DWI offense, such driver may be compelled to submit to a chemical test. §39-20-01.1

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §39-20-01
Urine:	**Yes** §39-20-01
Other:	**Saliva** §39-20-01

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**

[1]The term "intoxicating liquor" means and includes any beverage containing alcohol. §39-01-01(28)
[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or urine alcohol concentration of 0.10 or more.
[3]Alcohol concentration is described as percent by wgt. of alcohol in the blood. However, this is defined to mean either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine. §39-20-07(4)
[4]These alcohol concentrations must still be supported by physical evidence of intoxication. N.D. Atty. Gen. Opinion 98-01, 1/8/98
[5]Under §39-06.2-10.2(5), a CMV operator is deemed to have given consent to a PBT under §39-20-14.
[6]See also, *City of West Fargo v. Maring,* 458 N.W.2d 318 (N.D. 1990), and *State v. Murphy,* 516 N.W.2d 285 (N.D. 1994). If an arrested drunk driving offender has not been given their *Miranda* warnings, statements that they made refusing to submit to a chemical test cannot be admitted into evidence at trial. However, the fact that they refused to submit to such a test is admissible. *State v. Beaton,* 516 N.W.2d 645 (N.D. 1994), & *State v. Satrom,* 524 N.W.2d 92 (N.D. 1994)

Adjudication of DWI Charges: (continued)

Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Addiction evaluation is required for 1st thur 3rd offs. §39-08-01(4)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**No**
Administrative Licensing Action (Susp/Rev):	Same as for Implied Consent Refusal §§39-20-04 & 39-20-14 There are no sanctions if they submit to an implied consent test.
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal **Rev-1 yr**; 2nd refusal[1] (w/n 5 yrs) **Rev-2 yrs**; 3rd or sub refusal[1] (w/n 5 yrs) **Rev-3 yrs** These license revocations are mandatory; i.e., no temporary restricted license may be issued. §§39-06.1-11(2) & 39-20-04 There is no licensing action for a refusal if a person pleads guilty to a DWI offense. §39-20-04(2)
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy below and Misc. Sanctions on p. 3-363.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off (Cl B Misd)-Not more than **30 dys**; 2nd off (w/n 5 yrs) (Cl B Misd)-Not more than **30 dys**; 3rd (w/n 5 yrs) (Cl A Misd)-Not more than **1 yr**; 4th off (w/n 7 yrs) (Cl A Misd)-Not more than **1 yr**; 5th and sub offs (w/n 7 yrs) (Cl C felony)-Not more than **5 yrs** §§12.1-32-01 and 39-08-01(2) & (4)
Mandatory Minimum Term:	1st off-**No**; 2nd off (w/n 5 yrs)-**4 dys** of which 48 hrs must be served cons[2]; 3rd off (w/n 5 yrs)-**60 dys** of which 48 hrs must served cons[2]; 4th or sub off (w/n 7 yrs)-**180 dys**[4] of which 48 hrs must be served cons.[2] §39-08-01(4) See Footnote No. 3 below.

[1]Previous DWI convictions are also considered as prior refusals.
[2]The mandatory fine and imprisonment sanctions may be either suspended or deferred if the defendant was only "in actual physical control of a motor vehicle." This exclusion, however, does not apply if the defendant was "driving" a vehicle. §39-08-01(4)(e)(1) For persons under 18 year old, who have been convicted of a subsequent DWI offense (w/n 5 yrs), a sentence of 48 con hrs of confinement in a minimum security facility jail or 10 dys of community service. §39-08-01(4)(e)(2)
[3]§39-08-04(a) & *State v. Nelson,* 417 N.W.2d 814 (N.D. 1987)
[4]The law does not specifically provide for mandatory criminal sanctions beyond a 4th offense.
Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Zimmerman,* 539 N.W.2d 49 (N.D. 1995), *State v. Kvislen,* 544 N.W.2d 876 (N.D. 1996), *State v. Jacobson,* 545 N.W.2d 152 (N.D. 1996), *State v. Barth,* 545 N.W.2d 162 (N.D. 1996), & *State v. Storbakken,* 552 N.W. 78 (N.D. 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

	Special Note: If an offender has been ordered to participate in an addiction treatment program and they are also subject to mandatory imprisonment, the time spent in the treatment program "must be credited as a portion of the sentence of imprisonment...." §39-08-01
Fine: Amount ($ Range):	1st off-Not more than **$1,000**; 2nd off (w/n 5 yrs)-Not more than **$1,000**; 3rd offs (w/n 5 yrs)-Not more than **$1,000**; 4th off-Not more than **$1,000**; 5th and sub offs-Not more than **$5,000** §12.1-32-01
Mandatory Min. Fine ($):	1st off-**$250**; 2nd off (w/n 5 yrs)-**$500**; 3rd off (w/n 5 yrs) **$1,000**; 4th or sub off (w/n 7 yrs)-**$1,000** See Footnote Nos. 2 and 3 on p. 3-360.
Other Penalties: Community Service:	2nd off (w/n 5 yrs)-**10 dys** as an alternative to imprisonment (does not apply to other subsequent offenses) See Footnote Note No. 2 on p. 3-360.
Restitution (eg Victim's Fund)	**Yes** By the defendant for all offs (§§5-01-06, 12.1-32-02 & 12.1-32.08) and via a victims' compensation fund (§65-13-01 et seq.).
Other:	**Ignition Interlock.** The court or driver licensing agency may order a defendant to install an "ignition interlock" device on their veh. The requirement to use an "ignition interlock" device does not effect the mandatory license suspension periods noted on p. 3-362. Such a requirement appears to apply only to the issuance of temporary restricted driving privileges. §§39-06.1-11 & 39-08-01.3.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they either (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters or breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or drugs or (3) refuse to submit to a chemical test for an alcohol concentration. Note: The disqualification section, §39-06.2-10, appears to only apply to a refusal to submit a chemical test for an alcohol concentration; however, the CMV implied consent section, §39-06.2-10.2, applies to tests for either an alcohol concentration or for the presence of other drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). The State must adopt regulations that follow 49 CFR parts 383 and 392 concerning 24 hr out-of-service requirements for persons who operate a CMV with any measurable amount of alcohol in their system. Note: It appears to be an infraction to operate a CMV with an alcohol concentration ≥0.04. A person, who is convicted of committing an infraction, is subject to a fine of not more than $500. However, under the criminal code, if they have been convicted of a prior infraction w/n 1 yr of the present offense, they may be convicted of a Cl B misd. The sanctions for this misd are an imprisonment term of not more than 30 dys and/or a fine of not more than $1,000. §§12.1-32-01(7), 39-06.2-02, 39-06.2-10, 39-06.2-10.1, 39-06.2-10.2, 39-06.2-10.9 & 39-07-06

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:	See Double Jeopardy on p. 3-360.
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes** (1) ≥**0.10** or (2) Persons Under 21 Years Old-≥**0.02** (BAC/BrAC/UrAC For standards, see Footnote No. 3 on p. 3-359.) §§39-06.1-11(2), 39-20-03.1, 39-20-04.1 & 39-20-07 1st off-**91 dy susp** (30 dys mand A restricted lic. may be issued after this mand period.); 2nd off[1] (w/n 5 yrs)-**365 dy susp** (mand); 3rd and sub off[1] (w/n 5 yrs)-**2 yr susp** (mand)
Other:	**None**
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	See Alcohol Education/Treatment below. 1st off-**Susp**; 2nd off (w/n 5 yrs)- **Susp**; 3rd and sub off (w/n 5 yrs)-**Susp** §39-06.1-10 Note: For a 4th or subsequent offense (w/n 7 yrs), see II under Alcohol Treatment below.
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**91 dys**; 2nd off (w/n 5 yrs)-**365 dys**; 3rd and sub off (w/n 5 yrs)-**2 yrs**
Mandatory Minimum Term of Withdrawal:	1st off-**30 dys** (A temporary license may be issued after the 30 dy mandatory period. §39-06.1-11(2)); 2nd off (w/n 5 yrs)- **365 dys**; 3rd and sub off (w/n 5 yrs)-**2 yrs** §§39-06.1-10(3.1) & 39-0.6.1-11 Note: No restricted licenses can be issued in cases where there has been a serious injury related to a DWI offense. §§39-06-31 & 39-06.1-11(2)
Other:	
Rehabilitation:	
Alcohol Education:	See Alcohol Treatment below.
Alcohol Treatment:	**Yes** I. For a 1st, 2nd and 3rd DWI off conviction, the defendant must be referred to an alcohol rehabilitation facility for addiction evaluation. Following the evaluation, the court may require the defendant to complete an alcohol education or treatment program. §39-08-01(4) A defendant's license cannot be restored until they furnish a written statement from an approved treatment program either that they do not need alcohol education/treatment or that they have complied with the "attendance rules" of such program. §39-06.1-10(3.1)(a) II. For a 4th or subsequent offense (w/n 7 yrs), a defendant must complete an addiction treatment program and have no alcohol or drug related offense convictions w/n 2 consecutive years before their driving privileges can be restored. §39-06.1-10(3.1)(b)

[1]A previous violation also includes a previous DWI offense conviction or previous implied consent refusal.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: **No**
Terms Upon Which Vehicle Will Be Released:
Other: **Impoundment.** License plates may be impounded following a conviction for an alcohol driving off. The period of impoundment is for the same period of time as the defendant's license susp. period. §39-08-01(3)
Forfeiture (Not Mandatory). For three or more DWI offense convictions (w/n 5 yrs), a defendant's vehicle may be subject to forfeiture. §39-08-01.3

Miscellaneous Sanctions Not Included Elsewhere: **Mandatory Sanctions DWI Injury/Death.** Mandatory imprisonment sanctions apply if either a death or a serious injury is DWI related. If a person is convicted of a homicide which is related to DWI (e.g., manslaughter (§12.1-16-02) or negligent homicide (§12.1-16-03)), there is a mandatory penalty of **1 yr.** imprisonment. If a person is convicted of DWI where there is a serious injury caused by the defendant, there is a mandatory penalty of **90 dys** imprisonment. §§39-06-31(1) & 39-08-01.2
Child Endangerment. It is a Cl A misd (imprisonment term for not more than 1 yr and/or a fine of not more than $1,000) for a person ≥21 yrs old to commit a DWI offense while transporting a "minor". §§12.1-32-1 & 39-08-01.4 Note: The term "minor" is not defined in the motor vehicle law (Title 39). However, North Dakota law usually defines a "minor" as any person under 18 yrs old (e.g, §14-10-01).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **No** See the Special Note note above under Miscellaneous Sanctions for DWI offenses.

Sanctions:
Criminal Sanction:
Imprisonment (Term):
Mandatory Minimum Term:
Fine ($ Range):
Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and Type of Action: **Special Note:** Even though this State does not have a veh homicide statute, it, nevertheless, provides for mandatory license rev from 30 dys to 1 yr for a conviction of manslaughter resulting from the operation of a motor veh. §39-06-31(1)

Other Criminal Actions Related to DWI: (continued)

Length of Term of Licensing Withdrawal:	
Mandatory Action--Minimum Length of License Withdrawal:	
Other:	
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See The Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	1st offense, 2nd offense (w/n 5 yrs) & 3rd offense (w/n 5 yrs)-**Cl B Misd** Not more than **30 dys** Subsequent offense (w/n 5 yrs)-**Cl A Misd** Not more than **1 year** §§12.1-32-01(5) & (6) and 39-06-42
Mandatory Minimum Term of Imprisonment:	**4 con dys** §§39-06-42(2) & 39-08-01
Fine ($ Range):	1st offense, 2nd offense (w/n 5 yrs) & 3rd offense (w/n 5 yrs)-Not more than **$1,000** Subsequent offense (w/n 5 yrs)-**Cl A Misd** Not more than **$1,000** §12.1-32-01(5) & (6)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	I. For driving while license is suspended. The lic. suspension is extended for an additional period as follows: 1st off-**at least 6 mos** (90 dys if the original lic. susp was not DWI related); 2nd off (w/n 3 yrs)-**at least 6 mos**; 3rd and sub. off (w/n 3 yrs)-**1 yr** §39-06-43 II. For driving while license is revoked. The license revocation is extended for and additional period of **1 yr.** §39-06-43 Note: Special licensing actions apply for a violation of the conditions of a restricted license. 39-06.1-11, 39-06-43 & 39-08-01 **License Plate Impoundment.** Under §39-06-42(3), license plates may also be impounded for the duration of the driver's license susp/rev.
Length of Term of License Withdrawal Action:	See above.
Mandatory Term of License Withdrawal Action:	See above.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual offender:	

Special Note: It appears to be an infraction to operate a CMV during a CDL disqualification. Although the law is not clear, it may also be and infraction to operate a CMV while in violation of a CDL out-of-service order as prescribed by State regulations. A person, who is convicted of committing an infraction, is subject to a fine of not more than $500. However, under the criminal code, if they have been convicted of a prior infraction w/n 1 yr of the present offense, they may be convicted of a Cl B misd. The sanctions for this misd are an imprisonment term of not more than 30 dys and/or a fine of not more than $500. §§12.1-32-01(7), 39-06.2-06(2), 39-06.2-10.9 & 39-07-06

Other Criminal Actions Related to DWI: (continued)

Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §39-20-13
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**Yes**
Pedestrian:	**Yes**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1936) §§5-01-08, 5-01-09 & 5-02-06
Minimum Age (Years) Possession:	**21**[1&2] §5-01-08
Minimum Age (Years) Consumption:	**21**[2] §5-01-08
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §5-01-06.1 **Special Note:** The law prohibits an adult passenger, who is injuried while riding with an intoxicated driver, from bringing a dram shop cause of action.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No**
Dram Shop Actions-Social Hosts:	**Yes**[3] §5-01-06.1
Other:	**None**

[1]There is any employment exemption for persons who are 19-20 years old. §5-02-06.
[2]There is an exception when an "under age" person is accompanied by a parent or legal guardian. §5-01-08
[3]*Olson v. Griggs County,* 491 N.W.2d 725 (N.D. 1992), & *Born v. Mayers,* 514 N.W.2d 687 (N.D. 1994)

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Cl A Misd §5-01-09
Term of Imprisonment:	Not more than **1 yr** §12.1-32-01
Fine ($ Range):	Not more than **$1,000** §12.1-32-01
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev/susp** §§5-02-10 and 5-02-11
Length of Term of License Withdrawal:	Time period is not specified in the statute. §5-02-11
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	Cl A Misd §§5-01-09 & 5-02-06
Term of Imprisonment:	Not more than **1 yr** §12.1-32-01
Fine ($ Range):	Not more than **$1,000** §12.1-32-01
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev/susp** §§5-02-10 and 5-02-11
Length of Term License Withdrawal:	Time period is not specified in the statute. §5-02-11
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §39-08-18
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §39-08-18 The law states that "no person shall drink or consume alcoholic beverages ... in or on any motor veh when such veh is upon a public highway or in an area used principally for public parking."

STATE:	**OHIO**
General Reference:	Ohio Revised Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §4511.19(A)(1)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1&2] §4511.19(A)(2), (3) & (4) Persons Under 21 Years Old ≥**0.02 but <0.10**[1&3] §4511.19(B)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **a of Drug Abuse** or (2) a Combination of Alcohol and a Drug of Abuse §4511.19(A)(1)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §4511.191(A)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §4511.191(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *City of Westerville v. Cunningham,* 239 N.E.2d 40 (Ohio 1968), & *Maumee v. Anistic,* 632 N.E.2d 497 (Ohio 1994)
Other Information:	A conscious person cannot have a blood sample withdrawn via force for BAC testing. *State v. Lampman,* 612 N.E.2d 779 (OhioApp. 1992)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §4511.191(A)
Urine:	**Yes** §4511.191(A)
Other:	Probably **No** "Other bodily" substance is applicable to §4511.19 but is not mentioned in the implied consent statute (§4511.191).

[1]Alcohol concentration standards are (1) percent by weight of alcohol in the blood, (2) grams of alcohol per 210 liters of breath or (3) grams of alcohol per 100 milliliters of urine. §§4511.19(A) & (B) and 4511.191(F)

[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of 0.10 or more or (2) a urine alcohol concentration of **0.14** or more.

[3]Under §4511.19(B), a person under 21 years old shall not operate a vehicle with an alcohol concentration of ≥0.02 up to 0.10 for blood or breath and ≥0.028 up to 0.14 for urine.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 100 milliliters of urine.) ≥0.04, (2) are under the influence of a controlled substance, (3) refuse to submit to a chemical test for the presence of either alcohol or controlled substances or (4) violate an "out-of-service" order. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (or for any other period as specified by Federal regulations) (mand). A violation of any of these items appears to be a 1st Degree misd; the sanctions for such a misd are an imprisonment for not more than 6 mos and/or a fine of not more than $1,000. In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol or a controlled substance in their system must be placed "out-of-service" for 24 hours. **Special Note:** Under separate provisions of law, no person shall operate a CMV while their alertness is impaired; such impairment includes the use of any drug which would adversely affect such alertness or ability to operate a CMV. The sanctions for violating this prohibition are for a 1st offense (minor misd) a fine of not more than $100 and for a 2nd offense (4th Degree misd) jail for not more than 30 dys and/or a fine of not more than $250. §§2929.21, 4506.01(A), (E), (G), (H) & (V), 4506.15, 4506.16(A) & (B), 4506.17(A), 4511.79 and 4511.99(C)

Adjudication of DWI Charges

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	1st Refusal (minor misd)-Not more than **$100**; 2nd refusal (w/n 1 yr) (4th Degree misd)-**30 dys** and not more than **$250**; 3rd and subsequent refusals (w/n 1 yr of 1st) (3rd Degree misd)-not more than **60 dys** and not more than **$500** §§4511.99(D) & 2929.21(B)
Administrative Licensing Action (Susp/Rev):	1st Refusal-**Susp-1 yr** (30 dys mand); 2nd Refusal (w/n 5 yrs)-Susp-**2 yrs** (90 dys mand); 3rd Refusal (w/n 5 yrs)-**Susp-3 yrs** (1 yr mand); Subsequent Refusal (w/n 5 yrs)-**Susp-5 yrs** (3 yrs mand) Except as noted, occupational driving privileges may be granted after the mandatory period of lic. susp has passed. **Caution:** Occupational driving privileges cannot be granted if the driver has had 3 prior refusals w/n 7 yrs or 3 or more drunk driving or vehicle homicide offense convictions w/n 7 yrs. §4511.191(E), (I) & (K) **Special Note:** I. A susp for a refusal will not terminated if the driver is found "not guilty" of the related DWI offense. II. However, such susp will terminate if the person is either found guilty of or pleads guilty to a related DWI offense. §4511.191(H)(2) & (K)
Other:	Important. See the Special Note on p. 3-370 and Footnote No. 1 on p. 3-371.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Aggravated Vehicle Assault and Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off (1st Degree misd)-Not more than **6 mos**; 2nd off[1] (w/n 6 yrs) (1st Degree misd)-Not more than **6 mos**; 3rd off (w/n 6 yrs)(misd)[1&2]-**30 con dys-1 yr**; sub offs (w/n 6 yrs)(4th Degree felony)[1]-**60 con dys-18 mos** §§2929.14, 2929.16, 2929.18(B)(3), 2929.19(C), 2929.21 & 4511.99(A)

[1]For sanction enhancement purposes, a previous offense also includes either a conviction for a vehicle homicide offense where alcohol or drugs were a factor or a violation of §4511.19(B) (persons under 21 years old who operate a motor vehicle with a BAC ≥0.02).
[2]A crime is classified as a misdemeanor if the imprisonment sanction is not more than 1 yr. §2901.02(F)

Sanctions Following a Conviction for a DWI Offense:
(continued)

	Offense for Persons Under 21 Years Old (≥0.02 but <0.10). 1st off (4th Degree misd)-Not more than **30 dys**; 2nd off (w/n 1 yr) (3rd Degree misd)-Not more than **60 dys** §§2929.21, 4511.19(B) & 4511.99(O)(1)
Mandatory Minimum Term:	1st off-**3 con dys**[1&2] (Note: 3 con dys is defined as 72 con hrs.) §4511.991); 2nd off (w/n 6 yrs)-**10 con dys**[2] (Alternative: 5 con dys in jail and not less than 18 con dys "house arrest" with electronic monitoring[3]); 3rd off (w/n 6 yrs)-**30 con dys-1 yr**[2] (Alternative: 15 con dys in jail and not less than 55 con dys "house arrest" with electronic monitoring[3]); sub offs (w/n 6 yrs)-**60 con dys**[4] **Important:** Misdemeanor offenders, who are either alcoholics or who are suffering from acute alcohol intoxication, may not be subject to the above mandatory imprisonment sanctions. See "I" under Alcohol Treatment on p. 3-372.
	Offense for Persons Under 21 Years Old (≥0.02 but <0.10). **None**
Fine: Amount ($ Range):	1st off-**$200 to $1,000**; 2nd off (w/n 6 yrs)-**$300 to $1,500**; 3rd off (w/n 6 yrs)-**$500 to $2,500**; sub offs (w/n 6 yrs)-**$750 to $10,000**
	Offense for Persons Under 21 Years Old (≥0.02 but <0.10). 1st off -Not more than **$250**; 2nd off (w/n 1 yr)-Not more than **$500**

[1]In lieu of this 3 day jail sanction, the court may place a defendant on probation and order them to attend a driver's intervention program for 3 consecutive days. §§4511.99(A)(1) & 3720.66.
[2]For a 1st, 2nd or 3rd off, a defendant may be given work release following the mandatory jail sentence. §4511.99(A)(5)(a) & (b)
[3]This alternative is imposed only when their are overcrowded jail conditions which prohibit the offender from commencing their term of imprisonment within 60 dys of sentencing. §4511.99(A)(8)
[4]**Special Conditions for DWI Felony Offenses.** I. For a first DWI felony offense, the 60 con dys must be served in a local incarceration facility (e.g., jail, a community based correctional facility, a halfway house, or other alternative residential facility). In addition, after the mand incarceration period is served, the offender may be placed in either community control probation or the electronic monitoring program. II. For a subsequent DWI felony offense, the 60 con dys must be served in State prison and such person is not eligible to participate in the electronic monitoring program. §§2929.13(G), 2929.15(A), 2929.17 & 2929.23(3)(d)

Aggravated Vehicle Assault. A person commits "Aggravated Vehicle Assault" if they cause serious injury to another person while operating a motor vehicle (e.g, DWI). 1st off (4th Degree felony): Jail-18 mos to 5 yrs; fine-not more than $2,500; subsequent off (or a 1st off where the defendant has previously been convicted of a vehicle homicide offense) (3rd Degree felony): Jail-2 to 10 yrs; fine-not more than $5,000. §§2903.08 & 2929.11 Note: "Shock probation" is not available for persons who are repeat offenders or who have a prior DWI or vehicle homicide offense conviction. §2903.08(C)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Gustafson*, 668 N.E.2d 435 (Ohio 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Min. Fine ($):	1st off-**$200**; 2nd off (w/n 5 yrs)-**$300**; 3rd off (w/n 5 yrs)-**$500**; sub offs (w/n 5 yrs)-**$750** See Footnote No. 1. Offense for Persons Under 21 Years Old (≥0.02 but <0.10). **None**
Other Penalties:	
Community Service:	**Possible** The law is not specific, but it appears that community service could be made a condition of probation. §2947.061
Restitution (eg Victim's Fund)	**Yes** (1) A victim may receive payment only for property damage directly from a defendant. §2929.21(E) & *State v. Theuring,* 546 N.E.2nd 436 (OhioApp. 1988). (2) A victim is also eligible for reparations from the State. §2743.51 et seq.
Other:	**Driver's Intervention Program.** §3720.66 **Ignition Interlock.** As a condition of probation by the court.[2] §§2951.02(I), 4507.16(C), 4511.83 & 4511.99(L) **Fine In Lieu of Vehicle Forfeiture.** See Footnote No. 2 on p. 3-372.
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-369 and the Special Note below.
Administrative Per Se Law:	≥**0.10 BAC/BrAC** or ≥**0.14 UrAC** (For standards, see Footnote No. 1 on p. 3-367.) (1) **Susp-90 dys** (15 dys mand) if the offender has no prior DWI, vehicle homicide or vehicle assault convictions. (2) **Susp-1 yr** (30 dys mand) if the offender has one prior DWI, vehicle homicide or vehicle assault conviction w/n 6 yrs. (3) **Susp-2 yrs** (180 dys mand) if the offender has two prior DWI, vehicle homicide or vehicle assault conviction w/n 6 yrs. (4) **Susp-3 yr** (mand) if the offender has three or more prior DWI, vehicle homicide or vehicle assault conviction w/n 6 yrs. Occupational licenses may be issued after the above mandatory suspension periods. Administrative license suspensions are to be "offset" by any license suspension imposed as a result of a DWI offense conviction. **Caution:** Occupational driving privileges cannot be granted if the driver has had 3 or more drunk driving or vehicle homicide offense convictions w/n 7 yrs.

[1]Ref: *State v. Cichy,* 480 N.W.2d 90 (Ohio App. 1984).
[2]If such a condition is imposed, defendants must also obtain a specially marked driver's license indicating that they may only operate a vehicle equipped with such a device. §2951.02(I)(3)

Special Note: I. Usually, following a DWI arrest where there has been either a refusal to submit to a chemical test or where the test indicated an illegal alcohol concentration level (administrative per se), an offender's license is immediately suspended until the initial court appearance which must take place within 5 dys after the arrest. §§4511.191(D) & 4511.196 Important. The Ohio Supreme Court has held that the immediate suspension of a license by a law enforcement officer does not violate Federal or State constitutional provisions concerning due process of law. *State v. Hochhausler,* 668 N.E.2d 457 (Ohio 1996) However, in this same case, the court held that those provisions of the administrative per se law that prohibit the courts from granting a stay of license suspension violated constitutional principles of separation of powers. II. If an offender's license has not been suspended either for a refusal or under the administrative per se provisions, the court may impose a license suspension where the offender would pose a "threat to the public safety". §4511.196(B) III. Notwithstanding the fact that a court may on appeal terminate a license suspension based either on a refusal or under the administrative per se provisions, it may still impose a license suspension where the offender would pose a "threat to the public safety". §4511.196(B)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Ignition Interlock. For (1) and (2), a person may be required to use "ignition interlock" devices when operating a vehicle on an occupational license. For (3) and (4), a person must use these devices when driving on an occupational license.
Note: A susp for an administrative per se violation will terminate if the person is either (1) found "not guilty" of or (2) pleads "guilty" to a related DWI offense.
§§4507.16 and 4511.191(F), (H)(2), (I)(4) & (K)

Other: **None**

Post DWI Conviction Licensing Action: See Point System below.

Type of Licensing Action (Susp/Rev): 1st off-**Susp**; 2nd off (w/n 6 yrs)-**Susp**; 3rd off (w/n 6 yrs)-**Susp**; sub offs (w/n 6 yrs)-**Susp/Rev** DWI Related Aggravated Vehicle Assault-**Rev** §§2903.08 & 4507.16(B) See the Special Note below. Offense for Persons Under 21 Years Old (≥0.02 but <0.10).-**Susp** §§4507.16(E), (G) &(I)

Term of License Withdrawal (Days, Months, Years, etc.): 1st off-**6 mos to 3 yrs**; 2nd off (w/n 6 yrs)-**1 to 5 yrs**; 3rd off (w/n 6 yrs)-**1 to 10 yrs**; sub offs (w/n 6 yrs)-**Susp for not less than 3 yrs or Permanent Revocation** See Footnote No. 1. DWI Related Aggravated Vehicle Assault-**Permanent Revocation**
Offense for Persons Under 21 Years Old (≥0.02 but <0.10).-**60 dys to 2 yrs** §§4507.16(E), (G) &(I)

Mandatory Minimum Term of Withdrawal: 1st off-**15 dys**[2]; 2nd off (w/n 6 yrs)-**30 dys**[2]; 3rd off (w/n 6 yrs)-**180 dys**[2]; sub offs (w/n 6 yrs)-**3 yrs**[2] §4507.16(F) & (L) After these mandatory minimum susp periods, occupational driving privileges may be granted. **Caution:** Occupational driving privileges cannot be granted if the driver has had 3 or more drunk driving or vehicle homicide offense convictions w/n 7 yrs. See Footnote No. 1. §4507.16(F) & (G) DWI Related Aggravated Vehicle Assault-**Permanent Revocation**
Offense for Persons Under 21 Years Old (≥0.02 but <0.10)-**60 dys**

[1]**Persons Under 18 Years Old.** I. Persons <18 yrs old, who violated any provision of the DWI law (§4511.19), have their license suspended for 6 mos (appears mand). §4507.162(A) I.e., this suspension also applies to persons <18 yrs old who violate §4511.19(B) by driving with a BAC/BrAC ≥0.02 (UrAC ≥0.028) but <0.10 (UrAC <0.14). II. Persons <18 yrs old, who commit 3 or a combination of 3 violations as specified in §4507.162 w/n 2 yrs, have their license suspended for 1 yr (appears mand). These violations include refusal to submit to a chemical test, admin. per se and driving while suspended or revoked. §4507.162(A).
[2]For 1st and 2nd offs, the court may order a person to use **"ignition interlock"** devices when using an occupational license. for 3rd and sub. offs, the court must require a person to use these devices when using an occupational license. See Footnote No. 2 on p. 3-370. §4511.16(F) & (L)
Point System. A license may be suspended via a point system under §4507.021(D), (G)(11) & (K). In brief, under this section a DWI conviction results in an assessment of 6 points. If a driver accumulates 12 or more points from traffic violations within a 2 yr period, their license may be suspended for 6 mos. Also, 4 points are assessed for a 0.02 offense for persons under 21 years old.
Special Note: I. Under §4507.1610, the court is authorized to suspend a license for a violation of a municipal DWI ordinance which is substantial similar to State law. However, the suspension period cannot exceed that imposed under State law. II. The licensing agency can also suspend an offender's license for 6 mos. An occupational license is available after the person has served the same mandatory license suspension periods noted above. §4507.169(B) & (E)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:
Rehabilitation:
Alcohol Education:
Alcohol Treatment:

Yes I. A person, (1) who has been charged with a misdemeanor offense, (2) who has been determined by the court to be either an alcoholic or a person suffering from acute alcohol intoxication and (3) who would benefit from an alcohol or drug treatment program, may, in lieu of imprisonment, be placed in such a program under close supervision. However, a regular DWI offender, a §4511.19(A) offender, must be confined in a treatment facility for at least **3 dys**. §2935.33
II. For 2nd offs, the court may require a defendant to attend a treatment program. For 3rd and sub. offs, the court shall require the defendant to attend a treatment program. §4511.99(A)(2), (3) & (4)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Important. See the Special Note below. 2nd off (w/n 6 yrs)-**Immobilization** of and **impoundment** of the license plates of the vehicle used in the offense for **90 dys**; 3rd off (w/n 6 yrs)-**Immobilization** of and **impoundment** of the license plates of the vehicle used in the offense for **180 dys**; Sub. off (w/n 6 yrs)-**Criminal Forfeiture** of the vehicle used in the offense §§4507.164, 4511.195 & 4511.99 See Footnote Nos. 2 & 3.

Terms Upon Which Vehicle
Will Be Released:
Other:

A person convicted of a 4th or subsequent offense, is prohibited from registering a motor vehicle for 5 yrs. §§4503.234(E) & 4507.021(C)(3)

Miscellaneous Sanctions
Not Included Elsewhere:

A person under 18 yrs old, who violates the regular DWI law, §4511.19(A), may be assigned to temporary custody of not more than 5 dys either (1) to a detention home, (2) to another similar institution for children or (3) to a school camp. §2151.356(A)(6)

[1]Even though the occupation licenses can be granted as indicated, under §4507.16(I), the court cannot suspend (1) the first 90 days of the license suspension period for a 1st off, (2) the first year of the license suspension period for a 2nd off, (3) the first year of the license suspension period for a 3rd off and (4) the first 3 years of the license suspension for a 4th or subsequent offense.
[2]A non-driver owner of the vehicle may avoid the forfeiture sanction if they can prove by a preponderance of the evidence that they neither knew or should have known that an offense was or would be committed. §4503.234(C)(3) If the vehicle is not subject to forfeiture due to this provision and the vehicle's registration has been either been assigned or transferred, the defendant may be required to pay a fine which is equal to the value of the vehicle. §§4503.234 & 4511.99(A)(4)(b)
[3]The court has discretionary authority to prohibit the defendant from either registering a vehicle or renewing or transferring the registration of any vehicle owned by a person who has been convicted of an offense that requires driver's license suspension or revocation. §4507.16(A)(2)

Special Note: The Ohio Supreme Court has held that the law providing for vehicle seizure and immobilization, without a prior hearing, violates U.S. Constitutional provisions concerning due process of law when it is applied against vehicle owners who were not operating the vehicle at the time of the drunk driving offense. *State v. Hochhausler,* 668 N.E.2d 457 (Ohio 1996)

Sanctions Following a Conviction for a DWI Offense: (continued)

Miscellaneous Sanctions Not Included Elsewhere: (continued)

Child Endangerment. It is separate offense to operate a motor vehicle in violation of the drunk driving laws while carrying a passenger who is under 18 yrs old. 1st off (1st Degree misd)-imprisonment for not more than 6 mos and/or a fine of not more than$1,000; 1st where there has been serious physical harm to the child or subsequent off (5th Degree felony)-imprisonment from 6 to 12 mos and/or a fine of not more than $2,500; subsequent child endangerment off where there has been serious physical harm to the child or where there has been serious physical harm to the child and the driver has a prior drunk driving offense conviction (4th Degree felony)-imprisonment from 6 to 18 mos and/or a fine of not more than $5,000 In addition to the above, offenders are subject to not more than 200 hrs of community service, which is not in lieu of community service that may be imposed via probation, and license suspension for 90 dys, which is consecutive to any other licensing action. §§2919.22, 2929.14, 2929.18 & 2929.21

Confinement Costs. In some counties, offenders may have to pay the costs of confinement (workhouses). §§2929.223 & 2947.19

Other Criminal Actions Related to DWI:

Homicide by Vehicle: See the Special Note below.

State Has Such a Law: **Yes** (1) Aggrevated (Reckless) Vehicle Homicide-Felony §2903.06; (2) Vehicle Homicide (Negligence)-1st off -Misd; sub. off-Felony §2903.07

Sanctions:

Criminal Sanction:

Imprisonment (Term):(1) Aggrevated (Reckless) Vehicle Homicide: 1st off (aggrevated Felony 3rd degree)-**1 to 5 yrs**; sub. off[1] (aggrevated Felony 2nd degree)-**2 to 8 yrs**; (2) Vehicle Homicide (Negligence): 1st off (Misd 1st degree)-not more than **6 mos**; sub. off[1] (Felony 4th degree)-**6 to 18 mos** §§2929.14 & 2929.21 See Footnote No. 2.

Mandatory Minimum Term: See Footnote No. 2.

Fine ($ Range): (1) Aggrevated (Reckless) Vehicle Homicide: 1st off (aggrevated Felony 3rd degree)-**not more than $10,000**; sub. off[1] (aggrevated Felony 2nd degree)-**not more than $15,000**; (2) Vehicle Homicide (Negligence): 1st off (Misd 1st degree)-**not more than $1,000**; sub. off[1] (Felony 4th degree)-**not more than $5,000** §§2929.18 & 2929.21

Mandatory Minimum Fine: See Footnote No. 2.

[1]A previous offense includes either a §2903.06 or a §2903.07 offense.

[2]For either type of offense, either a second offender or a 1st offender who has had a previous DWI conviction is not eligible for probation. §§2903.06(C) & 2903.07(C)

Special Note: "Involuntary manslaughter" (death as a result of committing a felony or misdemeanor) may include DWI as an element of the offense. §2903.04 If the death is felony related, the offense is an aggravated felony 1st degree (Jail-3 to 10 yrs; fine-not more than $20,000). If the death is misdemeanor related, the offense is an aggravated felony 3rd degree (Jail-1 to 5 yrs; fine-not more than $10,000). §§2929.14 & 2929.18

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action: Licensing Authorized and Type of Action:	For either Aggrevated (Reckless) Vehicle Homicide or Vehicle Homicide (Negligence)-**Susp or rev** §§2903.06(B), 2903.07(B), 4507.16(A), 4507.16(D), 4507.34 & *City of Columbus v. Tyson,* 484 N.E.2d 155 (Ohio App. 1983) See the Special Note on p. 3-371.
Length of Term of Licensing Withdrawal:	For either Aggrevated (Reckless) Vehicle Homicide or Vehicle Homicide (Negligence)-susp-**30 dys to 3 yrs** or rev-not more than **1 yr** For either offense, if alcohol or drugs were involved, the driver's license is **permanently revoked**. §4507.16(D) There is also **permanent license revocation** if a person has been convicted of "Involunary Manslaughter" where DWI is an element of the offense. §2903.04(D)(1)(a)
Mandatory Action--Minimum Length of License Withdrawal:	For either Aggrevated (Reckless) Vehicle Homicide or Vehicle Homicide-susp-**30 dys** §4507.16(G) For either offense, if alcohol or drugs were involved, the driver's license is **permanently revoked**. §4507.16(D) There is also **permanent license revocation** if a person has been convicted of "Involunary Manslaughter" where DWI is an element of the offense. §2903.04(D)(1)(a)
Other:	For either vehicle homicide offense, 6 points are assessed against a driver's record. §4507.021(G)(3) A driver's license may be suspended for 6 mos if a person has accumulated 12 points w/n a 2 year period. **License Plate Impoundment.** A vehicle's license plates may be impounded if the owner thereof has had their driver's license either suspended or revoked for any death related vehicle offenses. §4507.164(A) See Footnote No. 3 on p. 3-372.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. 1 and the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	1st Off (1st Degree misd)-not more than **6 mos**; 2nd Off (w/n 5 yrs) (misd)-**10 con dys to 1 yr**; 3rd & sub. Off (w/n 5 yrs) (misd)-**30 con dys to 1 yr** §§2929.21, 4507.02(D)(2) & 4507.99(B)

[1]Driving while suspended for an implied consent law violation (refusal)-1st Degree misd: Imprisonment-not more than 6 mos ; fine-not more than $1,000 ; and license revocation-not more than 1 year §§2929.21(B)(1) & (C)(1), 4511.192 and 4511.99(B)

Special Note: It is a 1st Degree misd to operate a CMV during either a CDL disquaification or a CDL out-or-service order. The sanctions for this offense are an imprisonment term of not more than 6 mos and/or a fine of not more than $1,000. In addition, if the offense concerned CDL operation while under an out-of-service order, the offender is subject to a CDL disqualification; see DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL) on p. 3-367. §§2929.21(B)(1) & (C)(1), 4506.04(A)(2) and 4506.99(A)

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	1st Off-**3 con dys** (Alternative: 30 con dys of "house arrest" with electronic monitoring.[1]); 2nd Off (w/n 5 yrs)-**10 con dys** (Alternative: 90 con dys of "house arrest" with electronic monitoring.[1]); 3rd & sub. Off (w/n 5 yrs)-**30 con dys**
Fine ($ Range):	1st Off-**$250 to $1,000**; 2nd Off (w/n 5 yrs)-**$500 to $2,500**; 3rd & sub. Off (w/n 5 yrs)-**$500 to $2,500**
Mandatory Minimum Fine:	1st Off-**$250**; 2nd Off (w/n 5 yrs)-**$500**; 3rd & sub. Off (w/n 5 yrs)-**$500** See Footnote No. 2.
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp**[3] §4507.99(B)(4)
Length of Term of License Withdrawal Action:	For 1st, 2nd, 3rd and sub. off-not more than **1 yr** §4507.99(B)(4) See the Special Note below.
Mandatory Term of License Withdrawal Action:	For 1st, 2nd, 3rd and sub. off-not more than **1 yr** §4507.99(B)(4) See the Special Note below and Footnote No. 1 on p. 3-371.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	

[1]This alternative is imposed only when their are overcrowded jail conditions which prohibit the offender from commencing their term of imprisonment within 60 dys of sentencing. §4507.99(B)(6)
[2]Ref: *State v. Cichy,* 480 N.E.2d 90 (Ohio App. 1984).
[3](1) The vehicle used in the offense shall be "immobilized" and the license plates "impounded" for the following mandatory periods: 1st Off-30 dys; 2nd Off-60 dys and (2) for a 3rd or sub. off, the vehicle used in the offense will be subject to criminal forfeiture. §§4507.361(C), 4507.164(C) & 4507.99(B) A non-driver owner of the vehicle may avoid the forfeiture sanction if they can prove by a preponderance of the evidence that they neither knew or should have known that an offense was or would be committed. §4503.234(C)(3) If the vehicle is not subject to forfeiture due to this provision and the vehicle's registration has been either been assigned or transferred, the defendant may be required to pay a fine which is equal to the value of the vehicle. §4507.99(B)(3)

Special Note: In addition to the "immobilization" and license plate "impoundment" of a vehicle that was used in the offense, the law also provides via judicial action for the mandatory "impoundment" of the license plate(s) of vehicle(s) registered to the offender even if such vehicles were not used in the offense. The license plates of such vehicles shall be impounded until the offender's license is reinstated. §4507.02(F)(1) Nevertheless, under §§4507.02(F)(2) & 4503.231, such vehicle may be operated if special license plates are obtained. These special license plates must be different in appearance than the normal ones. (Note: Under §4507.164(C), discretionary judicial authority also exists for such registration suspension.) See Footnote No. 3 on p. 3-372.

Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §313.13(B)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** §313.13(B)
Vehicle Passengers:	**No**
Pedestrian:	**No**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[1] §§4301.22(A)(1), 4301.63 & 4301.69 (Year Eff: 1987)
Minimum Age (Years) Possession:	**21**[1] §4301.632
Minimum Age (Years) Consumption:	**21**[1] §§4301.632 & 4301.69
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §§4399.01, 4399.02 & 4399.18
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Mason v. Roberts,* 244 N.E. 2d 844 (Ohio 1973)[2]

[1]It is illegal (1) for a licensee to sell to a person under 18 yrs old or (2) for a person under 18 yrs old to either purchase, possess or consume (unless accompanied by a parent, legal guardian or spouse who is over 18 yrs old) a low-alcohol beverage. §§4301.22(A)(2) & 4301.631 A low-alcoholic beverage, "means any brewed or fermented malt product, or any product made from the fermented juices of grapes, fruits, or other agricultural products, that contains either no alcohol or less than one-half of one per cent of alcohol by volume." However, such beverages do not include soft drinks (e.g., root beer, birch beer or ginger beer). §4301.01(B)(20)
[2]See also *Terry v. Markoff,* 497 N.E.2d 1133 (Ohio App. 1986), & *Great Central Insurance Co. v. City of Bowling Green,* 523 N.E.2d 354 (Ohio 1988).

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:	**Yes Limited** A social host is not liable for the actions of an intoxicated adult guest. *Settlemyer v. Wilmington Veterans Post No. 49, American Legion, Inc.*, 464 N.E.2d 521 (Ohio 1984) However, a social host may be held liable for either the death or injury of a third person caused by an intoxicated minor guest. *Mitseff v. Wheeler*, 526 N.E.2d 798 (Ohio 1988), and *Williams v. Veterans of Foreign Wars*, 650 N.E.2d 175 (Ohio App. 2 Dist. 1994) Also, a social host may be held liable for the injuries sustained by an intoxicated minor guest. *Huston v. Konieczny*, 556 N.E.2d 505 (Ohio 1990)
Other:	An intoxicated patron, including a person under the legal drinking age, does not have a cause of action against a licensee for injuries they have sustained off the licensee's premises due to the consumption of alcoholic beverages at the licensed establishment. *Smith v. 10th Inning, Inc.*, 551 N.E.2d 1296 (Ohio 1990), *Gillum v. Fairgreens County Club*, 673 N.E.2d 637 (OhioApp. 4 Dist 1996), & *Cole v. Broomsticks, Inc.*, 669 N.E.2d 253 (OhioApp. 1 Dist. 1996)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	3rd Degree Misd §§4301.22(B) & 4301.99(E)
Term of Imprisonment:	Not more than **60 days** §2929.21(B)(3)
Fine ($ Range):	Not more than **$500** §2929.21(C)(3)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev/Susp**[1] §§4301.25 and 4301.27
Length of Term of License Withdrawal:	**Indeterminate**
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	See the Special Note on p. 3-378.
Type of Criminal Action:	**Misd**[2] 1st or 3rd Degree
Term of Imprisonment:	1st Degree Misd: Not more than **6 mos** §2929.21(B)(1); 3rd Degree Misd: Not more than **60 days** §2929.21(B)(3)
Fine ($ Range):	1st Degree Misd: Not more than **$1,000** §2929.21(C)(1); 3rd Degree Misd: Not more than **$500** §2929.21(C)(3)

[1]For a 1st or 2nd off (w/n 2 yrs), a monetary forfeiture may be imposed in lieu of a suspension: 1st violation-$100 to $200 for each day of the suspension; 2nd violation-$200 to $400 for each day of the violation. §4301.252

[2]A person may be charged with a misd of either the 1st or 3rd degree. §§4301.22(A), 4301.69, 3301.99(C) & §4301.99(E)

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	See the Special Note below.
License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes Rev/Susp**[1] §§4301.25 & 4301.27
Length of Term License Withdrawal:	**Indeterminate**
Anti-Happy Hour Laws/Regulations:	**Yes** 4301:1-1-50 (regulation)[2] This regulation prohibits the sale of alcoholic beverages at a lower price (i.e., below the regular price) only after 9:00 p.m.
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §4301.62(B)(4) & (5)
Anti-Consumption Law (Yes/No):	**Yes** Drivers and passengers §4301.64 The law states that "[n]o person shall consume any beer or intoxicating liquor in a motor vehicle."

[1]For a 1st or 2nd off (w/n 2 yrs), a monetary forfeiture may be imposed in lieu of a suspension: 1st violation-$100 to $200 for each day of the suspension; 2nd violation-$200 to $400 for each day of the violation. §4301.252

[2]This regulation was held to be constitutional. *DDDJ, Inc. v. Liquor Control Comm.*, 582 N.E.2d 1152 (Ohio App. 10 Dist. 1990)

Special Note: A licensee commits a 4th degree misdemeanor if they sell a low-alcohol beverage to a person under 18 yrs old. See Footnote No. 1 on p. 3-376. The sanctions for this offense are a jail term of not more than 30 dys and/or a fine of not more than $250. §§2929.21(B)(4) & (C)(4) and 4301.99(B) However, they are not subject to having their license either suspended, revoked or canceled. §4301.22(A)(2)

STATE:	**OKLAHOMA**
General Reference:	Oklahoma Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	I. Under the influence of alcohol 47 §11-902(A)(2) II. Impaired by the consumption of alcohol (driving while impaired) 47 §761(A)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1&2] 47 §§756(5) & 11-902(A)(1) Persons Under 21 Years Old-**Any Measurable Quantity of Alcohol in the Blood or Breath** 47 §6-106.4(A) & (B)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	I. Under the influence of (1) **Intoxicating Substances**[3] or (2) a Combination of These and Alcohol 47 §11-902(A)(3), (4) & (B) II. Impaired by **Any Other Substance**[3] 47 §761(A) III. Persons Under 21 Years Old-Under the influence of any other intoxicating substance[3] 47 §6-106.4(A) & (B)
Other:	I. A BAC/BrAC ≥**0.10**[2] is also *prima facie* evidence that a person was under the influence of alcohol. 47 §756(3) II. A BAC/BrAC **>0.05 but <0.10**[2] is evidence of Driving While Impaired. 47 §756(2) For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** 47 §751(A)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** 47 §751(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) 47 §756(A)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more. 47 §756(5)
[2]Alcohol concentration is defined as grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. 47 §756(4)
[3]As used in Title 47, "intoxicating substance" means any controlled dangerous substance or **any other substance**, except alcohol, which can be "ingested, inhaled, injected or absorbed into the human body" and which can adversely affect "the central nervous system, vision, hearing or other sensory or motor functions." 47 §11-902(B)

Special Note: For any type of DWI offense, a defendant may be placed on probation before judgement. Following the completion of the proscribed probation period (which cannot exceed 5 yrs) and the satisfactory completion of any terms of probation (which could include jail, community service or restitution), the DWI charge is dismissed and the criminal record is expunged. 22 §991c Also, under 43A §3-452(A), upon a plea of guilty, *nolo contendere,* et al. by the defendant to either driving while under the influence or driving while impaired, the court, prior to judgment, may defer further proceedings on condition that the defendant agrees to attend and to successfully complete an alcohol and drug course or treatment program.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials), if while operating a CMV they (1) have a BAC/BrAC ≥0.04 (See Footnote No. 3 above.), (2) are under the influence of alcohol or an intoxicating substance or (2) refuse to submit to a chemical test for an alcohol concentration. For either (1) a second "conviction" or (2) a combination of two "convictions" of any of the above listed items, the "disqualification" is for life (10 yrs mand). 47 §6-205.2

Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information:	(1) Under 47 §753, a mandatory chemical test may be ordered in situations where there is probable cause that a person "while intoxicated" has operated a motor vehicle and that such operation has caused either death or serious physical injury to another person. (2) Also, under 47 §10-104(B), a mandatory chemical for alcohol/drugs may be ordered in traffic accident situations where the driver (person to be tested) has been cited for a traffic offense.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** For alcohol & intoxicating substances 47 §751(A)
Urine:	**Yes** For intoxicating substances only 47 §751(A)
Other:	**Saliva** For intoxicating substances only 47 §751(A)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** All offenders are required to submit to alcohol and drug evaluation prior to sentencing. 47 §11-902(G)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st Refusal-**Rev 180 dys**[1]; 2nd Refusal (w/n 5 yrs)-**Rev 1 yr**[1]; Sub Refusal (w/n 5 yrs)-**Rev 3 yrs**[1] 47 §§ 6-205.1, 6-211(I), 753, 754.1 & 755 See Footnote No. 2 on p. 3-382.
Other:	**None**

[1]This license revocation is not mandatory. It may be "modified". However, as a condition of modification, the driver must be agree, except in certain circumstances, to only operate motor vehicles that are equipped with an ignition interlock device. 47 754.1(B) See Footnote No. 1 on p. 3-382.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy and Persons Under 21 Years Old below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	I. Driving While Impaired-Not more than **6 mos** 47 §761 II. Driving While Under the Influence/Illegal Per Se: 1st Off (Misd)-**10 dys to 1 yr**; 2nd and sub off (w/n 10 yrs-Schedule I-3 Felony)-Until 7/1/99, not more than **2 yrs** On or after 7/1/99, see "Intoxicant Crimes Involving a Vehicle Matrix" below. 21 §9(B) & 47 §11-902 III. Personal Injury Accident (Driving While Under the Influence/Illegal Per Se)-1st Off (Misd)-**90 dys to 1 yr**; 2nd or sub off (Schedule I-2 Felony)-Until 7/1/99, not more than **2 yrs** On or after 7/1/99, see "Intoxicant Crimes Involving a Vehicle Matrix" below. 21 §9(B) & 47 §11-904(A) IV. Great Bodily Harm (Driving While Under the Influence/Illegal Per Se) (Schedule I-1 Felony)-Until 7/1/99, not more than **2 yrs** On or after 7/1/99, see "Intoxicant Crimes Involving a Vehicle Matrix" below. 21 §9(B) & 47 §11-904(B)
Mandatory Minimum Term:	**None**
Fine:	
Amount ($ Range):	I. Driving While Impaired-**$100 to $500** 47 §761 II. Driving While Under the Influence/Illegal Per Se: 1st Off (Misd)- Not more than **$1,000**; 2nd off (w/n 10 yrs)-Not more than **$2,500**; 3rd and sub off (w/n 10 yrs)-Not more than **$5,000**; 47 §11-902 III. Personal Injury Accident (Driving While Under the Influence/Illegal Per Se)-1st off (Misd)-Not more than **$2,500**; 2nd off (Felony)-Not more than **$5,000** 47 §11-904(A) IV. Great Bodily Harm (Driving While Under the Influence/Illegal Per Se) (Felony)-not more than **$5,000** 47 §11-904(B)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Kane v. State,* 915 P.2d 932 (Okl.Cr. 1996) In *Price v. Reed,* 725 P.2d 1254 (Okl. 1986), a person's driving privileges were withdrawn via the administrative per se law after they had been **acquitted** of a drunk driving offense. Nevertheless, the court upheld the licensing action and held that there was no double jeopardy issue.

Persons Under 21 Years Old. Persons <21 yrs old are subject to the following legal prohibitions in addition to those provided for under the regular drunk driving laws. It is unlawful for these persons to operate a motor vehicle either (1) with "**any measurable quantity of alcohol**" in either their blood or breath or (2) while under the influence of "any other intoxicating substance" (which is defined to mean a controlled dangerous substance) or a combination of alcohol and an intoxicating substance. 47 §6-106.4(A) & (B) The sanctions for violating these prohibitions are as follows. For a 1st offense, there is a fine of **$100 to $500** and/or at least 20 hrs of community service. For a 2nd or sub offense, there is a fine of **$100 to $1,000** and/or at least 40 hrs of community service. For either a 1st or sub offense, a defendant may be require to compete a treatment program. 47 §6-106.4(C)

Intoxicant Crimes Involving a Vehicle Matrix (Effective 7/1/99). Felony sanctions are determined via the "Intoxicant Crimes Involving a Vehicle Matrix". The matrix is divided into various sanction levels for each type of felony. For a Schedule I-1 Felony, the sanction levels range from 12-36 mos community service to 1-4 yrs imprisonment. For a Schedule I-2 Felony, the sanction levels range from 3-12 mos community service to 1-2.5 yrs imprisonment. And, for a Schedule I-3 Felony, the sanction levels range from 0-12 mos community service to 1-24 mos imprisonment. The court determines the appropriate sanction level based upon enhancement factors such as the number of prior offenses, whether a victim was older than 62 or less than 12 years old and/or whether a victim was maimed as a result of the offense. 21 §§9(A), 15(A), (B)(2) & (G), 16(A)(11), (12) & (13) and 20.4

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	**Yes** See "Intoxicant Crimes Involving a Vehicle Matrix" on p. 3-381. 47 § 11-902
Restitution (eg Victim's Fund)	**Yes** The court may order a defendant to pay restitution to a victim. 22 §§991a(A)(1)(a), 991a-10 & 991f
Other:	**None**
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-381.
Administrative Per Se Law:	**Yes** (1) **BAC/BrAC ≥0.10** or (2) Persons Under 21 Years Old-**Any Measurable Quantity of Alcohol in the Blood or Breath** See Footnote No. 3 on p. 3-379.-1st Action-**Rev 180 dys**[1]; 2nd Action (w/n 5 yrs)-**Rev 1 yr**[1&2]; Sub. Action (w/n 5 yrs)-**Rev 3 yrs**[1&2] 47 §§6-205.1, 6-211(I), 754, 754.1, 755 & 756
Other:	**None**
Post DWI Conviction Licensing Action:	See the Special Note below.
Type of Licensing Action (Susp/Rev):	Driving While Impaired-**Susp** 47 §761 Driving While Under the Influence[3&4]: 1st Off-**Rev**; Sub. Off-**Rev** 47 §§6-205(A)(2) & 11-902 See Footnote No. 2 and the Comment below.

[1]There is no minimum mandatory period of license revocation. A revocation may be "modified" in cases of where "no other adequate means of transportation" exists. See Ignition Interlock on p. 3-384. 47 §§6-211, 754.1 & 755

[2]For license sanction enhancement purposes only, a previous offense includes prior revocations based on either DWI offenses, admin. per se violations or implied consent test refusals. 47 §6-205.1(a)(3) & (4)

[3]The revs for a violation of 47 §11-902 would, it appears, apply also to violations of 47 §11-904 (personal injury accident or causing great bodily harm while operating a vehicle under the influence/illegal per se). 47 §§6-205, 6-205.1 & 756 There are no specific licensing actions in 47 §11-904.

[4]Persons Under 21 Years Old. The same license revocation sanctions that apply to driving while under the influence also apply to persons <21 yrs old who are convicted of driving either (1) with **"any measurable quantity of alcohol"** in either their blood or breath or (2) while under the influence of "any other intoxicating substance." 47 §§6-106.4(C)(4)(c), 6-205(A)(2) & 6-205.1

Special Note: Under separate provisions of law, either (1) an offender <18 yrs old, who is convicted of a regular drunk driving offense, or (2) an offender 18, 19 or 20 yrs, who is convicted of driving with either **"any measurable quantity of alcohol"** in either their blood or breath or while under the influence of "any other intoxicating substance" is subject to having their license either canceled or denied for one of the following periods: 6 mos, 1 yr, 2 yrs or until they reach 21 yrs old. However, a 2nd or subsequent offender must have their license either canceled or denied for 2 yrs or until they reach 18 yrs old whichever is longer. Licensing action is not mandatory. A 1st or subsequent offender may obtain relief from this action upon a showing of hardship. 47 §§6-107.1 & 6-107.2

Comment: The law does not appear to provide for a license revocation based upon an illegal per se offense conviction (47 §11-902(A)(1)). The license revocation provisions of 47 §6-205 provide for a revocation based upon a conviction of driving while under the influence of alcohol or intoxicating substances but it does not specifically provide for such action based upon a conviction of operating a motor vehicle with a BAC/BrAC ≥10. Note: There is a license revocation for operating a motor vehicle with a BAC/BrAC ≥0.10 via the admin. per se law.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.): Driving While Impaired-1st off-**30 dys**; 2nd off-**6 mos**; 3rd off-**12 mos** 47 §761 Driving While Under the Influence 1st Off-**180 dys**[1]; 2nd Off (w/n 5 yrs)-**Rev 1 yr**[1]; Sub Off (w/n 5 yrs)- **Rev 3 yrs**[1] 47 §§6-205 & 6-205.1

Mandatory Minimum Term of Withdrawal: Driving While Imparied: 1st off-**None**; 2nd off-**6 mos**; 3rd off-**12 mos** 47 §761 Driving While Under the Influence: 1st off-**None**[2]; 2nd off-**None**[2]; sub off-**None**[2]

Note: The license suspensions for driving while impaired do not apply if the defendant has had their license revoked for a refusal to submit to a chemical test or for an administrative per se violation based on the same incident. 47 §761

Other:

Rehabilitation:

Alcohol Education: **Yes** 1st and subsequent offenders (all types of DWI offenses) may be ordered by the court to participate in alcohol or drug substance abuse courses.[3] A 1st offender must successfully complete this course before their license can be reinstated. 22 §§987.8(B)(11) & 991a(A)(6) and 47 §6-212.2

Alcohol Treatment: **Yes** The court may order 1st and subsequent offenders (all types of DWI offenses) to participate in alcohol or drug rehabilitation treatment programs.[3] 22 §§987.8(B)(11) & 991a(A)(6)

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **No**

Terms Upon Which Vehicle Will Be Released:

Other:

Miscellaneous Sanctions Not Included Elsewhere:

Electronic Home Monitoring. A defendant may also be subject to court ordered electronic home monitoring. There is fee which is not to exceed $75 per month associated with participation in this program. 22 §§987.8(B)(14) & 991a(A)(5)(e) **Comment:** It appears that electronic home monitoring can be used as a substitute for incarceration.

Victim Impact Program. The court may order a defendant may to participate in a victim impact panel program and pay a **$15 to $25** fee to attend such program. 47 §11-902(H) and 22 §§987.2(B)(12) & 991a(A)(6)(b)

[1]See Footnote No. 4 on p. 3-382.

[2]See Footnote No. 1 on p. 3-382.

[3]**Special Note**: Following a conviction for either driving while under the influence or driving while impaired, the court may suspend the execution of sentence on condition that the defendant agrees to attend and successfully completes an alcohol and drug abuse course or treatment program. 43A §452(B)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions Not Included Elsewhere: (continued)	**Ignition Interlock.** I. the court may order a defendant to install an ignition interlock device on every vehicle used by them following reinstatement of their driving privileges. This requirement shall remain if effect for a period of time as the court deems proper. 22 §§987.8(B)(13) & 991a(A)(6) II. As a condition of license modification for either an admin. per se violation or a driving while under the influense conviction, the licensing agence must require a person to install ignition interlock devices on the vehicles they operate. 47 §754.1(B) II. If a court modifies a license action which has been sustained by the licensing agency, for any drunk driving offense it may require a person to install ignition interlock devices on the vehicles they operate. 47 §755 **Investigation Costs.** The defendant may be required by the court to reimburse the Oklahoma State Bureau of Investigation for any services that were associated with the defendant's criminal offense. There is an exception based on "manifest hardship" to the defendant. 22 §§987.8(B)(9) & 991a(A)(4) **Other Costs.** A defendant may be required to pay other costs such as reimbursing the State for the cost of a victim's medical expenses and for the cost of court appointed attorneys for the defendant. The defendant may also be required to pay amounts into victim's compensation trust funds. 22 §991a(A)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Misd[1] 21 §§5 & 6 and 47 §11-903
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **1 yr** in the county jail
Mandatory Minimum Term:	**None**
Fine ($ Range):	**$100 to $1,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev**
Length of Term of Licensing Withdrawal:	1st off-**1 yr**; Sub off (w/n 5 yrs)-**3 yrs** 47 §6-205(A)(1), (B) & (C)
Mandatory Action--Minimum Length of License Withdrawal:	1st off-**1 yr**; Sub off (w/n 5 yrs)-**3 yrs**
Other:	**Restitution.** The court may order a defendant to pay restitution to a victim. 22 §§991a(A)(1)(a), 991a-10 & 991f

[1]**Special Note:** The Oklahoma Courts have decided that if a veh homicide is proximately caused by an alcohol driving law offender, for a first off the charge may be Manslaughter 1 and for a second off the charge may be Murder II. See respectively para. 1 of sec. 711 of Title 31 (*Mc Connell v. State,* 485 P.2d.764 (1971), & *White v. State,* 483 P.2d 751 (1971)) and para 2 sec. 701.8 of Title 21 (*Isom v. State,* 646 P.2d 1288 (1982)).

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote No. 1.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd**-Not more than **1 yr** 47 §6-303(B)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$100 to $500** 47 §6-303(B)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp or rev** 47 §6-303(C)
Length of Term of License Withdrawal Action:	Period of susp/rev extended for **3 mos** 47 §6-303(C)
Mandatory Term of License Withdrawal Action:	Period of susp/rev extended for **3 mos** 47 §6-303(C)

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

[1]I. It is a misd to operate a CMV during a CDL disqualification. The sanctions for this offense are an imprisonment term for not more than 1 yr and/or a fine of not less than $100 and not more than $500. 47 §6-205.2(I) II. A person, who violates and out-of-service order, is subject to the following CDL disqualification periods: 1st violation-90 dys (mand); 2nd violation (w/n 10 yrs)-1 yr (mand); and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand). If the offense involved the transportation of hazardous materials, the disqualification periods are as follows: 1st violation-1 yr (mand); and, 2nd or sub violation (w/n 10 yrs)-3 yrs (mand). 47 §6-205.2(G) & (H)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1983) 37 §§163.2(a), 241, 246(A) & 537(A)(1) & 528(E)
Minimum Age (Years) Possession:	**21** 21 §1215[1] & 37 §246(A)[2]
Minimum Age (Years) Consumption:	**21**[3] 37 §§241(C) & 246
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Brigance v. The Velvet Dove Restaurant,* et al., 725 P.2d 300 (Okl. 1986), & *Tomlinson v. Love's Country Stores, Inc.,* 854 P.2d 910 (Okl. 1993)
Dram Shop Actions-Social Hosts:	**No** *Troxell v. Bingham,* 774 P.2d 1073 (Okl.App. 1989)
Other:	An adult patron has no cause of action against a licensee for injuries sustained as a result of becoming intoxicated at the licensee's establishment. *Ohio Cas. Ins. Co. v. Todd,* 813 P.2d 508 (Okl. 1991) However, a licensee may be held liable for the injures sustained by an intoxicated minor patron. *Busby v. Quail Creek Golf & Country Club,* 885 P.2d 1326 (Okl. 1994), and *Mansfield v. Circle K. Corp.,* 877 P.2d 1130 (Okl. 1994)

[1]Under 21 §1215, it is illegal for a person under 21 years old to possess alcoholic beverages (alcoholic beverages containing more than 3.2% alcohol by weight) "upon any public street, road, or highway or in any public building or place."
[2]Under 37 §246(A), it is illegal for a person under 21 years old to possess "low-point beer" (alcoholic beverages containing more than ½ of 1% alcohol by volume but not more more than 3.2% alcohol by weight) with the intent to consume such beverages in public.
[3]I. Under 37 §246, it is only illegal for a person under 21 years old to consume "low-point beer" (alcoholic beverages containing more than ½ of 1% alcohol by volume but not more than 3.2% alcohol by weight) in public. II. Under 37 §241(C), it is illegal for a licensee to allow a person under 21 yrs old to consume "low-point beer" on the licensed premises.

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action: For alcoholic beverages 3.2% and above - **Felony** 37 §506(3), §537(A)(2) & §538(G) For low point beer ½ of 1% to 3.2% alcohol - **Misd** 37 §247

Term of Imprisonment: For felony off-Not more than **1 yr** 37 §538(G) For misd off-Not more than **6 mos** 37 §247

Fine ($ Range): For felony off-**$500 to $1,000** 37 §538(G) For misd off-Not more than **$500** 37 §247

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Rev** 37 §§244, 247 and 528(C)(1) & (E)

Length of Term of License Withdrawal: (1) For alcoholic beverages 3.2% and above - The period of revocation is not stated in the statute. Revocation periods are established via regulations. The law provides that the revocation period shall be "increasingly severe" for subsequent offenses. However, for a 4th offense w/n 24 mos, there is a mand. revocation. (2) For low point beer ½ of 1% to 3.2% alcohol - Rev by the district court for **12 mos**

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action: For alcoholic beverage 3.2% and above - **Felony** 37 §§537(A)(1) & 538(F); for low point beer ½ of 1% to 3.2% alcohol **Misd** 21 §§10, 21 & 1220 and 37 §§163.1, 163.2, 163.11, 163.20(a) & 241

Term of Imprisonment: For felony off - Not more than **5 yrs** For misd off - Not more than **1 yr**

Fine ($ Range): For felony off - **$2,500 to $5,000** For misd off - Not more than **$500**

Special Note: Separate provisions of law provide for special sanctions against out-of-State persons to sell any type of alcoholic beverages to persons less than 21 yrs old within the State contrary to State law. A person, who violates these provisions, is guilty of a Schedule G Felony. The sanctions for this felony are determined via a sentencing matrix. The matrix is divided into various sanction levels. For a Schedule G Felony, the sanction levels range from 0-12 mos community service to 1-27 mos imprisonment. The court determines the appropriate sanction level based upon enhancement factors. In addition, the court may impose a fine of not more than $5,000. 21 §§15(G) & 20.1, 37 §505(c) and 47 §§163.20(b) & 163.26

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev** 37 §§163.11(K)(3) & (L), 244, 528(C)(1), (D) & (E) and 538(E) & (F)
Length of Term License Withdrawal:	(1) For alcoholic beverages 3.2% or more alcohol- The period of rev not stated in the statute. Revocation periods are established via regulations. The law provides that the revocation period shall be "increasingly severe" for subsequent offenses.[1] However, for a 4th offense w/n 24 mos, there is a mand. revocation. (2) For low-point beer ½ of 1% to 3.2% alcohol- Rev by the district court for **1yr/12 mos** This rev is mand for sub offenses.
Anti-Happy Hour Laws/Regulations:	**Yes** 37 §537(B)(4)
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** 21 §1220 and 37 §537(A)(7)
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers Under 37 §537(A)(8), "[i]t shall be unlawful to drink intoxicating liquor ... in a public place." And, under 37 §8, no person shall consume intoxicating liquor in or upon any passenger coach, streetcar or in or upon any other vehicle commonly used for the transportation of passengers.

[1]For package store licensees who "knowingly" sell alcoholic to persons under 21 years old, license revocation is mandatory. 37 §528(D)

STATE:	**OREGON**
General Reference:	Oregon Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor[1] §813.010(1)(b)
Illegal Per Se Law (BAC):	≥**0.08**[1&2] §813.010(1)(a)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **A Controlled Substance** or (2) a Controlled Substance and Intoxicating Liquor[1] §813.010(1)(b) & (c)
Other:	A BAC of not less than **0.08** constitutes being under the influence of intoxicating liquor. §813.300(2) For Commercial Motor Vehicle Operators, see p. 3-393.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§813.100 & 813.131
Implied Consent Law Applies to Drugs (Yes/No):	**Yes**[3] §813.131
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes**[4] (Criminal and Civil Cases) §813.310
Other Information:	I. There is also an implied consent law on field sobriety testing.[3] §813.135 Important. See Field Sobriety Tests on p. 3-393. II. The Oregon Supreme Court has indirectly indicated that law enforcement officers are not authorized via statute to obtain a blood sample via force for BAC testing in DWI cases. However, such a sample may be forcefully obtained and tested for BAC (and possibility drug content) for other criminal offenses related to motor vehicle operation (e.g., criminally negligent homicide or manslaughter). §§813.140, 813.320 & *State v. Milligan,* 748 P.2d 130 (Or. 1988)

[1]A person commits a DWI offense if they drive "while under the influence of intoxicants". This offense is defined as illegal per se at a BAC ≥0.08 or driving while under the influence of either intoxicating liquor or controlled substances. §813.010(1) The Oregon Supreme Court has held that §813.010 is one offense namely that of driving while under the influence of intoxicants. This offense may be proven by showing that a person operated a motor vehicle either (1) with a BAC ≥0.08 or (2) while under the influence of alcohol or a controlled substance. *State v. King,* 852 P.2d 190 (Or. 1993), & *State v. Miller,* 788 P.2d 974 (Or. 1990) Note: The term "intoxicating liquor" has been judicially defined to include beer, wine or any other substance that contains alcohol. *State v. Miles,* 492 P.2d 497 (Or.App. 1972)

[2]Standard: Percent by weight of alcohol in the blood. §813.010(1)(a) However, under §813.300(4), percent by weight of alcohol in the blood is to be based on grams of alcohol per 100 cubic centimeters of blood.

[3]See Footnote No. 3 on p. 3-390.

[4]The State supreme court has indirectly abrogated a statutory provision, §813.136, which provides that, if a person either fails or refuses to submit to field sobriety testing, this fact may be admitted into evidence in any criminal or civil action arising out of the allegation that the person was DWI. The court has held that such an admission violates the State's constitutional provision against self-incrimination. *State v. Fish,* 893 P.2d 1023 (Or. 1995)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes Limited**[1&2]
Urine:	**Yes Limited**[2&3]
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Yes** §813.170 There is a diversion program for offenders who have not been convicted of a DWI off w/n a 10 yr period. §813.200 et seq.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol screening is required. §813.020(1)(b)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	See Special Note No. 1 and Vehicle Impoundment/Confiscation on p. 3-393.
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1. **Susp-1 yr** if no previous susps for either a test refusal or a DWI off (90 dys are mandatory)[4] 2. **Susp-3 yrs** for either a previous test refusal or a previous DWI off/admin. per se violation based license susp w/n 5 yrs (1 yr mand)[4] §§813.100, 813.130, 813.131, 813.132, 813.410, 813.420, 813.430 & 813.520
Other:	Consecutive license suspensions for refusals to submit to both breath and urine tests. §813.132

[1]Implied consent to submit to a chemical test via a blood sample applies only if the driver is "receiving medical care in a health facility immediately after a motor vehicle accident." §813.100(1)

[2]A law enforcement officer may obtain either a blood or urine sample for testing to determine either an alcohol concentration or drug content. Such samples may be obtained only (1) if the driver "expressly consents" to the taking of the sample or (2) if they are unconscious (or otherwise in condition rendering them incapable of expressly consenting) and there is probable cause to believe the person was violating the DWI law. §813.140 Note: A person can "expressly consent" by physical actions as well as by verbal communication. *State v. Doran,* 983 P.2d 569 (Or.App. 1995)

[3]A law enforcement officer may request a person to submit to a chemical test of their urine to determine the presence of a controlled substance. However, this requirement only applies if either (1) a breath test disclosed an alcohol concentration <0.08 or (2) the person was involved in an accident that resulted in either a personal injury or property damage. Nevertheless, in the case of either injury or property related accidents, a law enforcement officer may request a urine test following a breath test regardless of the results of the breath test. §813.131

[4]A restricted hardship license may be issued after this mandatory period. §813.520(1) & (3) This mand. period is reduced by any mand. susp. period that may be imposed for either a 2nd or sub. DWI off conviction (w/n 5 yrs) based on the same occurrence. §813.520

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	A DWI off is a Cl A Misd - Not more than **1 yr** §§813.010(4) & 161.615(1)
Mandatory Minimum Term:	**48 con hrs**[1] §813.020(2)
Fine:	
Amount ($ Range):	Not more than **$5,000** §161.635(1)(a)[2]
Mandatory Min. Fine ($):	**$565** §153.623(23)
Other Penalties:	
Community Service:	Not less than **80 hrs** nor more than **250 hrs** (as an alternative to imprisonment) §§813.020(2) & 137.129(4)
Restitution (eg Victim's Fund)	**Yes** Direct compensation to victims by the defendant (§§137.102 to 137.109) and also via a victims' compensation fund (§147.005 et seq.)
Other:	I. A **$130 fee** is charged in addition to any fine imposed. The fee is used to pay for diagnostic assessment, for intoxicated driver programs and for other purposes per §137.295. The court may waive this fee in whole or in part for indigent defendants. §§813.020(1)(a) & 813.030 II. Every DWI offender must pay a **Unitary Assessment of $84**. §137.290(1)(c) III. Every DWI offender must pay a **County Assessment** which is in addition to and which is based on the amount of fine they have to pay. The assessments vary in amount but are not more than **$59**. §137.309
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy below.
Administrative Per Se Law:	**Yes** ≥**0.08** (BAC See Footnote No. 2 on p. 3-389.) or **Any BAC for persons under 21 years old** 1. A **90 dy susp** (**30 dys** are mandatory[3]) if there has been no previous susp for either a chemical test refusal, an admin. per se violation or a DWI off 2. A **1 yr susp** (mandatory)[4] if there has been a previous susp for either a chemical test refusal, an admin. per se violation or a DWI off §§813.100(4), 813.130, 813.300(2) & (3), 813.410, 813.420, 813.430 and 813.520 Important: See Special Note No. 1 on p. 3-393.
Other:	See Vehicle Impoundment/Confiscation on p. 3-393.

[1]This term must be served unless justice requires otherwise. The court must state the reasons why the mandatory imprisonment term cannot be served consecutively. §813.020(2)(b) For the purpose of the minimum period of incarceration, imprisonment includes either a jail, minimum security facility or inpatient rehabilitation or treatment center. §813.020(2)(a) & *State v. Oary,* 829 P.2d 90 (Or.App. 1992).

[2]There is also a special assessment of $40 which must be imposed by the court not withstanding other fines. However, indigent persons are not required to pay this assessment. §147.259(1)

[3]A restricted hardship license may be issued after this mandatory period. §813.520(2)

[4]This mand. susp is reduced by any mand. susp imposed for either a 2nd or sub. DWI off (w/n 5 yrs) if based on the same occurrence. §813.520

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Phillips,* 909 P.2d 882 (Or.App. 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): 1st Off-**Susp**; 2nd and subsequent offs (w/n 5 yrs)-**Susp** See Special Note No. 3 on p. 3-393.
Ignition Interlock. Persons convicted of DWI offenses shall have an "ignition interlock" device installed in their vehicles prior to being issued a hardship license. §813.602(a)

Term of License Withdrawal (Days, Months, Years, etc.): 1st Off-**1 yr**; 2nd and subsequent offs (w/n 5 yrs)-**3 yrs**. §§809.420(2) & 813.400(2)
Under §§809.260 & 809.280(7), a person under 17 but not younger than 13 who is convicted of a DWI offense is subject to the following licensing action: 1st off-Susp for **1 yr** or until the person reaches 17 whichever is the longer susp period; 2nd or sub. off.-Susp for **1 yr** or until the person reaches 18 whichever is the longer susp period.
Persons Under 18 Years Old. Also, under §809.405(4), persons under 18, who have been convicted of a DWI offense, must have their license suspended until they are 18 or are otherwise eligible for license reinstatement.
Important: See Special Note No. 2 on p. 3-393.

Mandatory Minimum Term of Withdrawal: 1st Off-See Footnote No. 1; 2nd Off (w/n 5 yrs)-**90 dys**[2]; 3rd and subsequent offs (w/n 5 yrs)-**1 yr**[2] For persons under 17 but not younger than 13, 1st off-**90 dys**; 2nd or sub off-**1 yr** Important: See Special Note Nos. 1 & 2 on p. 3-393.

Other:

Rehabilitation:

Alcohol Education: **Yes** If an offender is determined to be a non-problem drinker, the offender must enroll in an alcohol education program. However, if the offender is determined to be a problem drinker, he or she must enroll in a rehabilitation program. The offender must enroll in either of these programs before such a license may be issued. For second or subsequent DWI offense convictions, a restricted hardship license can be issued only following an examination of the DWI offender by the mental health division to determine if the offender is a problem drinker. §§813.020(1)(c) & 813.500

Alcohol Treatment: **Yes** See Alcohol Education above.

[1]A restircted hardship license may be issued. §§807.240 & 813.520 Note: A 30 dy susp is mandatory if the defendant within the previous yr has been convicted of a major traffic off. §813.520(9)

[2]A restricted hardship license may be issued after this mandatory period. §813.520(4) & (5) Note: This mand. period is reduced by any mand. susp period imposed for either an implied consent law test refusal or an admin. per se law violation if based on the same occurrence. §813.520

Sanctions Following a Conviction for a DWI Offense:
(continued)

Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	See Footnote No. 1.
	Yes 2nd or sub DWI offs or Driving While Susp/Rev-**Discretionary Impoundment/Immobilization** for not more than **1 yr**[2] Applies to a vehicle that is either owned by or used by the offender.[2] §809.700
Terms Upon Which Vehicle Will Be Released:	Impoundment/immobilization for not more than **1 yr**[1] The offender must pay the costs of removing, storing or immobilizing the vehicle. This sanction applies where a person has been driving while their driver's license is suspended/revoked.[2] §809.700(1)(a), (2) & (6)

[1]The City of Portland has an ordinance that provides for vehicle forfeiture if a person is operating a motor vehicle while their driving privileges have been suspended for a DWI offense.
[2]Such vehicle's registration can also be suspended for not more than 120 dys. §809.010

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's CDL privilege is suspended if while operating a CMV they either (1) are convicted of a DWI offense (§813.010 offense), (2) had a BAC ≥0.04 (See Footnote No. 2 on p. 3-389.) or (3) refused to submit to a chemical test for alcohol concentration. For a 1st DWI conviction or a first violation of operating a CMV with a BAC ≥0.04, the CDL is suspended for 1 yr (mand); however, if the person was carrying hazardous materials, the suspension is for 3 yrs (mand). For a 1st refusal, the CDL is suspended for 3 yrs (mand); however, if the person was carrying hazardous materials, the suspension is for 5 yrs (mand). For a subsequent refusal, DWI conviction or violation of operating a CMV with a BAC ≥0.04 or a combination of these, the CDL privilege is suspended for life (mand). A CMV operator must be placed "out-of-service" for 24 hrs if (1) they have any amount of alcohol in their blood or (2) if they have consumed alcohol or other intoxicating beverage within 4 hrs of operating a CMV. §§813.050, 813.120, 813.130, 813.403, 813.404 & 813.410

Special Note No. 1: Under §807.220, persons may be issued an emergency driver's licenses if they are at least 14 years old. Except for restrictions that may placed on the emergency license such as when and where a vehicle may be operated, it appears that such a license could be issued for any emergency situation regardless of whether the person being issued this license has had the regular one either suspended or revoked for either (1) an implied consent law refusal, (2) an administrative per se law violation, (3) a DWI conviction or (4) convictions for other traffic law offenses. This section further provides that for persons 17 years old or younger, an emergency includes the situation where the person has to use a vehicle to travel to and from school.

Special Note No. 2: In addition to the licensing sanctions in the DWI law for driving while under the influence of controlled substances, it appears, that independently under other sections, a driver's license can be suspended for six (6) months for this offense. A hardship license cannot be issued. However, under "compelling circumstances" a court does not have to suspended a license. §§807.250(2), 809.265 & 809.280(9)

Special Note No. 3: The State issues special licenses to persons 14 to 17 yrs old for the purpose of attending educational institutions. The State, it appears, can issue such licenses notwithstanding a DWI conviction and the mandatory licensing sanctions provided for such an off if veh transportation is needed by the minor to attend such institutions. §§807.230, 809.420 & 813.400

Field Sobriety Tests. The Oregon Supreme Court has issued conflicting opinions concerning whether field sobriety tests are searches. In *State v. Nagel,* 880 P.2d 451 (Or. 1994), the court held that field sobriety tests are searches which are reasonable under both the Federal and State constitutions. The court further concluded that, given the facts in the case before it, such searches were not subject to the warrant requirement due to the fact that there existed both "probable cause" of a drunk driving offense and "exigent circumstances" based on the rationale that a suspect's intoxication would dissipate before a warrant could be obtained. However, an equally divided State supreme court affirmed a decision of the Oregon Court of Appeals that had held that such tests were not searches. *State v. Lawrence,* 843 P.2d 488 (Or.App. 1992), affirmed, 880 P.2d 431 (Or. 1994) **Comment:** If the holding the *Nagel* decision prevails, the court would appear to have eliminated the use of field sobriety tests as a means of determining "probable cause" of a drunk driving offense. This may complicate the State's ability to arrest a person for such an offense and invoke the impled consent law.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Impoundment Following Arrest. If there is probable cause of either a drunk driving or an offense of driving while suspended or revoked, the vehicle used in such offenses may be impounded. The vehicle shall be released if the person entitled to lawful possession (1) has a valid driving privileges, (2) submits proof of financial responsibility and (3) pays any fees associated with the impoundment. §809.720

Miscellaneous Sanctions
Not Included Elsewhere:

Home Detention. DWI defendants, who are placed on probation, may be "restricted" to their own residences. §137.540(2)(a) Note: This provision does not appear to interfere with the mand. jail requirements of §813.020(2).
Diversion Filing Fee. There is a diversion filing fee of **$237**. §813.240(1)
Diagnostic Assessment Fee. There is a diagnostic assessment fee of **$90**. §§813.020(1)(b) & 813.240(2)
Victim Impact Program. A DWI offender may be required to attend a victim impact treatment session. The offender may be require to pay a fee of from $5 to $50 to offset the cost of this program. §813.020(3)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **No**
Sanctions:
Criminal Sanction:
Imprisonment (Term):
Mandatory Minimum Term:
Fine ($ Range):
Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and
Type of Action:

Note: Even though this State does not have a veh homicide statute, it, nevertheless, provides for mandatory license rev for **5 yrs** for manslaughter etc. resulting from the operation of a motor vehicle. §809.410(1) Important: See Special Note No. 1 on p. 3-393. **Special Note:** Sec. 807.240 on hardship occupational licenses applies only to persons who have had their licenses suspended not revoked. See especially §807.240(1).

Length of Term of
Licensing Withdrawal:

Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum Length of License Withdrawal:	
Other:	
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote Nos. 1 & 2.
Sanction:	
Criminal:	
Imprisonment (Term):	**Cl C felony**-Not more than **5 yrs** §§811.182 & 161.605 See Footnote No. 3.
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$100,000** §161.625 See Footnote No. 3. There is also a Unitary Assessment of $94 (§137.290(1)(a)) and a County Assessment of between $5 and $59 (§137.309).
Mandatory Minimum Fine:	**$1,880** §153.623(21)(c)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**None**
Length of Term of License Withdrawal Action:	
Mandatory Term of License Withdrawal Action:	
	Note: See (1) Vehicle Impoundment/Confiscation and Footnote No. 2 on p. 3-393 and (2) Impoundment Following Arrest on p. 3-394.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §809.600 et seq.
Grounds for Being Declared an Habitual Offender:	(1) Three serious traffic offs (w/n 5 yrs) or (2) A combination of 20 minor and serious traffic offs (w/n 5 yrs)
Term of License Rev While Under Habitual Offender Status:	**5 yrs** Note: One (1) yr probationary and renewable license is available if certain conditions are met. §§807.270 & 809.650 Important: See Special Note No. 1 on p. 3-393.

[1]It is also Class C felony to operate a CMV during a CDL suspension based on a conviction of driving such a vehicle while under the influence of intoxicants. §§811.182 & 161.605

[2]It is a Class A misdemeanor to operate a CMV while under an out-of-service order. Sanctions: Jail-not more than 1 yr and/or a fine of $940 (mand) to $5,000. An offender is also subject to a civil penalty of $1,000 to $2,000 and additional CDL mand suspensions of 90 dys for a 1st violation and 3 yrs for a subsequent violation (w/n 10 yrs). However, if the CMV operator was either transporting hazardous materials or operating vehicle designed to carry 16 or more persons, the mand suspension periods for a violation of an out-of-service order are 1 yr of a 1st violation and 5 yrs of a subsequent violation (w/n 10 yrs) (regardless of the type of load or vehicle involved in the 1st violation). §§153.623(21)(b), 161.615(1), 161.635(1)(a), 809.410(32),(33), (34) & (35), 813.050 and 813.052

[3]It is a Class A misdemeanor for persons to operate vehicles while their licenses are suspended either for an implied consent refusal or for an admin. per se law violation (including persons <21 yrs old who operate a motor vehicle after administrative susp for driving with any alcohol in their blood). §811.182.(4)(c) Sanctions: Jail-not more than 1 yr; fine-$940 (mand) to $5,000. §§153.623(21)(b), &161.615(1), 161.635(1)(a) & 811.182(4)

Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Cl C Felony** §811.182
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **5 yrs** §161.605
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$100,000** §161.625 There is also a Unitary Assessment of $94 (§137.290(1)(a)) and a County Assessment of between $5 and $59 (§137.309).
Mandatory Minimum Fine ($):	**$1,880** §153.623(21)(c)
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §146.113
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** If over 13 yrs of age and w/n 5 hrs of accident §146.113
Vehicle Passengers:	**Yes** If over 13 yrs of age and w/n 5 hrs of accident §146.113
Pedestrian:	**Yes** If over 13 yrs of age and w/n 5 hrs of accident §146.113
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1933) §§471.410 & 471.430
Minimum Age (Years) Possession:	**21** Exemption for the possession of an alcoholic beverage in a private residence accompanied by or with the consent of a parent or for religious purposes. §§471.410 & 471.430
Minimum Age (Years) Consumption:	**21** Note: Under §471.430(2), "personal possession" of an alcoholic beverage by a person under 21 years old includes "consumption".
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes**[1] §§30.950 & 30.960 Note: In order to be liable, it must be shown either (1) that the licensee provided alcoholic beverages to a "visibly intoxicated" patron or (2) to a minor where it can be demonstrated that a reasonable person would have requested identification.

[1]An intoxicated passenger was injured in a traffic accident while riding with an intoxicated driver. It appears, that both individuals had been socializing and drinking alcoholic beverages purchased and/or consumed at numerous licensed establishments. The Oregon Court of Appeals held that the passenger could bring a third party dram shop action against various alcoholic beverage licensees to recover damages for injuries sustained in the accident. *Grady v. Cedar Side Inn, Inc.*, 963 P.2d 36 (Or.App. 1998) Note: In an earlier decision by this same court, a minor assisted in the purchase of alcoholic beverage from a licensee and was later injured in a traffic accident while riding with another minor who was intoxicated and who also assisted in such purchase. The injured minor passenger could not recover damages from the licensee. *Smith v. Harms*, 865 P.2d 486 (Or.App. 1993)

Other State Laws Related To Alcohol Use: (continued)

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No**[1]
Dram Shop Actions-Social Hosts:	**Yes** §§30.950 & 30.960 Note: In order to be liable, it must be shown either that the social host provided alcoholic beverages either (1) to a "visibly intoxicated" guest[2] or (2) to a minor guest where it can be demonstrated that a reasonable person would have requested identification.
Other:	A licensee is not liable for injuries sustained by intoxicated patrons. *Fulmer v. Timber Inn Restaurant and Lounge, Inc.*, 954 P.2d 201 (Or.App. 1998)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Cl A Misd** - Applies to the sale of (1) wine and beer sold by the drink by certain types of licensees and (2) all types of pkg alc. beverages by licensed stores §471.410 **Misd** - Applies to the sale of distilled spirits, wine and beer sold by the drink by (1) private clubs or (2) specially licensed restaurants or other commercial establishments where food is prepared and served. §§472.310 & 472.990 See the Special Note below.
Term of Imprisonment:	Cl A Misd - Not more than **1 yr** §161.615; Misd 1st off- Not more than **6 mos**; 2nd or subsequent offs - Not more than **1 yr** §472.990
Fine ($ Range):	Cl A Misd - Not more than **$5,000** §§161.635 & 161.655 Misd 1st off - Not more than **$500**; 2nd or subsequent offs - Not more than **$1,000** §472.990 There is also a Unitary Assessment of $54 (§137.290(1)(b)) and a County Assessment of between $5 and $59 (§137.309).

[1]Previous case law, that established common law negligence actions, appears to have been abrogated by the dram shop statute. Ref: *Cambell v. Carpenter,* 566 P.2d 893 (Or. 1977); *Chartrand v. Coos Bay Tavern, Inc.,* 696 P.2d 513 (Or. 1985); *Davis v. Billy's Con-Teena, Inc.,* 587 P.2d 75 (Or. 1978); and, *Solberg v. Johnson,* 760 P.2d 867 (Or. 1988).
[2]**Comment:** The guest could be either an adult or a minor.

Special Note: It is also a Cl A Misd for a licensee to allow a visibly intoxicated person to consume alcoholic beverages on the licensed premises. §§161.555(3), 471.412 & 471.990

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev**
Length of Term of License Withdrawal:	Any licensed establishment, which either sells liquor by the drink or packaged alcoholic beverages and which violates the liquor laws concerning sales to intoxicated persons, may have its license revoked/suspended for an indeterminate period of the time.[1] See the Special Note below. §§471.315, 472.180 & 472.187
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Cl A Misd** - Applies to the sale of (1) wine and beer sold by the drink by certain types of licensees and (2) all types of pkg alc. beverages by licensed stores. §471.410 **Misd** - Applies to the sale of distilled spirits, wine and beer sold by the drink by (1) private clubs or (2) specially licensed restaurants or other commercial establishments where food is prepared and served. §§472.310 & 472.990
Term of Imprisonment:	Cl A Misd - Not more than **1 yr**[2] §161.615 Misd 1st off- Not more than **6 mos**; 2nd or subsequent offs - Not more than **1 yr** §472.990
Fine ($ Range):	Cl A Misd - Not more than **$5,000**[2] §§161.635 & 161.655 Misd 1st off - Not more than **$500**; 2nd or subsequent offs - Not more than **$1,000** §472.990 There is also a Unitary Assessment of $54 (§137.290(1)(b)) and a County Assessment of between $5 and $59 (§137.309).

[1]A licensee, who is subject to a suspension ≤30 dys, may also have an administrative monetary penalty imposed on them either in addition to or in lieu of such suspension. The monetary penalty is from $100 to $2,000. For persons holding a server permit, the penalty is from $25 to $500. §471.322

[2]Under §471.410, there are certain mandatory sanctions for a Cl A Misd offense that apply to persons who sell or serve alcoholic beverages to a person under 21 yrs old. However, these mandatory sanction do not apply to licensees. §471.410(5)

Special Note: Under §471.412, a licensee cannot allow a visibly intoxicated person to consume alcoholic beverages on the licensed premises. This section provides that, notwithstanding any other provision of law, the Oregon Liquor Commission shall only issue letters of reprimand for the first three (3) violations w/n a 2 yr period.

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Susp/Rev**

Length of Term of License Withdrawal: Any licensed establishment, that either sells liquor by the drink or packaged alcoholic beverages and that violates the liquor laws concerning sales to persons under the minimum legal drinking age, may have their license revoked/suspended for an indeterminate period of the time. See Footnote No. 1 on p. 3-398. §§471.315, 472.180 & 472.187

Anti-Happy Hour Laws/Regulations: **No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No): **Yes** §811.170(1)(b) & (c)

Anti-Consumption Law (Yes/No): **Yes** driver and passengers §811.170(1)(a) Excludes passengers riding in a veh used to carry persons for hire.

STATE	**PENNSYLVANIA**
General Reference:	Pennsylvania Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol 75 §3731(a)(1)
Illegal Per Se Law (BAC):	≥**0.10**[1] 75 §3731(a)(4)(I) & (5)[2] Persons Under 21 Years Old. ≥**0.02** 75 §3731(a)(4)(II) & (5)
Presumption (BAC):	**None**
Type of Drugs/Drugs and Alcohol:	Under the influence of (1) **A Controlled Substance** or (2) a Controlled Substance and Alcohol 75 §3731(a)(2) & (3)
Other:	For Commercial Motor Vehicle Operators, see p. 3-403. Persons <21 Yrs Old. **Any Alcohol in the System** 75 §3718(a)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** 75 §1547(k)
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[3]
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** 75 §1547(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) 75 §1547(e)
Other Information:	A person has a right to refuse to submit to a chemical test. A "forced" test cannot be administered if this right is exercised. 75 §1547(b)(1) & *Com. v. Eisenhart,* 611 A.2d 681 (Pa. 1992)[4&5]

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** 75 §1547
Urine:	**Yes** 75 §1547
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Yes Limited** The original DWI charge cannot be reduced at a preliminary hearing or arraignment. 75 §3731(f)

[1]Standard: Percent by weight of alcohol in the blood. 75 §3731(a)(4) Percent by wgt. of alcohol in the blood may be expressed as grams of alcohol per 100 milliliters of blood. *Com. v. Karch,* 502 A.2d 1359 (Pa.Super. 1986)

[2]Title 75, §3731(a)(5) makes it an offense to have a BAC ≥0.01 w/n 3 hrs after driving. The Pennsylvania Supreme Court has held that this provision violates both the Federal and State constitutions on various grounds. *Com. v. Barud,* 681 A.2d 162 (Pa. 1996) Note: The constitutionality of the regular illegal per se provision, 75 §3731(a)(4), was not at issued.

[3]Only "reasonable grounds", not an actual arrest, is all that is needed. *Com. v. Urbanski,* 627 A.2d 789 (Pa.Super. 1993)

[4]**Special Note:** Under 75 §1547(a)(2), a person implicitly consents to a chemical test if they were driving a vehicle that was involved in an accident that resulted in either a death or an injury that required treatment at a medical facility. The Pennsylvania Supreme Court has held that this provision is unconstitutional because it did not require law enforcement officers to have "probable cause" of a crime prior to conducting a chemical test. The court considered such test to be a search. *Com. v. Kohl,* 615 A.2d 308 (Pa. 1992)

[5]The results of a chemical test (obtained via a warrantless search) showing an alcohol concentration, where the test was conducted on a blood sample that was withdrawn from an injured driver by medical personal at a hospital for treatment purposes but where such withdrawal was without the driver's consent, are admissible into evidence at a DWI trial. Of course, there must have been probable cause of a drunk driving offense before such evidence is admissible. *Com. v. Riedel,* 651 A.2d 135 (Pa. 1995)

Adjudication of DWI Charges: (continued)

Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol or drug screening is required. 75 §1548(a)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**Susp 12 mos** (Mand) An occupational or probationary license is not available. 75 §§1547(b)(1), 1553(d)(7) & 1554(f)(9)
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Acceptance of Accelerated Rehabilitation Disposition (ARD), DWI Aggravated Assault and Persons <21 Years Old below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st or 2nd offs-2nd Degree misd-Not more than **2 yrs** 3rd or sub offs-1st Degree misd-Not more than **5 yrs** 18 §1104(1) & (2) and 75 §3731(e)(1)

Accelerated Rehabilitation Disposition (ARD). A first DWI offender may be placed in ARD. 75 §§1552 & 3731(e)(6) and Pa. Cr. Pro. Rule 175 et seq. 1) Acceptance into and satisfactory completion of program may lead to dismissal of DWI charge. 2) Acceptance determined by judge after hearing relevant facts of prosecutor, defendant and any victims. Judge also announces terms of ARD 3) The following conditions must be imposed: costs for alcohol evaluation, education, treatment or any other costs of ARD; restitution to any victims; not less than 1 nor more than 12 mos license susp; and, court supervision from 6 to 12 mos. 4) Programs duration shall not exceed 2 yrs. 5) If defendant is found by the judge, at a hearing, to have violated ARD terms the program will be terminated and the prosecutor may proceed with the DWI charge(s). 6) When defendant enters ARD program because of a DWI charge, the Pa. Dept. of Tran. shall keep a record for 7 yrs. **Important:** ARD applies only to a first offense and acceptance of ARD is considered a 1st conviction for purposes of computing any subsequent violations. 75 §3731(e)(2) **Special Note:** However, ARD may not be allowed if: (1) defendant was convicted or accepted ARD, because of DWI charge within last 7 yrs; (2) present off violated habitual offender statute; (3) if any person other than defendant was seriously injured or killed.

DWI Aggravated Assault. A person, who "negligently causes serious bodily injury to another person" while violating the DWI laws, commits "aggravated assault by vehicle while driving under the influence," a 2nd degree Felony, and is subject to an imprisonment term of not more than 10 yrs and/or a fine of not more than $25,000. "Serious bodily injury" is defined to mean "any bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ." 18 §§1101(1) & 1103(2) and 75 §3735.1

Persons <21 Years Old. It is a Summary Offense for a person <21 yrs old to operate a motor vehicle **"while having any alcohol in his system."** The only sanction for this offense is a fine of **$100**. 75 §3718(a) & (c) However, a person <21 yrs old commits a regular drunk driving offense if they operate a motor vehicle with a BAC ≥**0.02**. 75 §3731(a)(4)(II)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:	1st off-**48 con hrs**[1]; 2nd off (w/n 7 yrs)-**30 dys**[1]; 3rd off (w/n 7 yrs)-**90 dys**[1]; 4th off (w/n 7 yrs)-**1 yr**[1] 42 §9721 & 75 §3731(e) *Com. v. Sojourner,* 518 A.2d 1145 (Pa. 1986) Important. See the Special Note below.
Fine:	
Amount ($ Range):	1st or 2nd off-Not more than **$5,000** 18 §1101(4) 3rd or sub off-Not more than **$10,000** 18 §1101(3)
Mandatory Min. Fine ($):	1st off[1]-**$300** and a surcharge of $50[2]; 2nd off (w/n 7 yrs.)[1]-**$300** and a surcharge of $100[2]; 3rd off (w/n 7 yrs.)[1]-**$300** and a surcharge of $200[2]; 4th off (w/n 7 yrs)[1]-**$300** and a surcharge of $300[2] 75 §§3731(e) & 6506(a)(7) See Footnote No. 3.
Other Penalties:	
Community Service:	1st off-Possible under ARD
Restitution (eg Victim's Fund)	**Yes**[4] Restitution is to be paid by a defendant to a victim. 18 §1106 Restitution is required under ARD. 75 §3731(e)(6)(iii)

[1]**Work Release.** Day time work release is possible for 1st and sub offenses. 75 §3731(h) & *Com. v. Kriston,* 588 A.2d 898 (Pa. 1991) **Comment:** Although the statute would appear to confine work release to litter collection from either public or private property, a recent decision by the Pennsylvania Superior Court has held that such "work release is not limited to litter collection." *Com. v. Snyder,* 560 A.2d 165, 174 (Pa.Super 1995) In *Kriston,* The Pennsylvania Supreme Court mentioned this statutory provision in a case concerning a subsequent offense but it did not discuss address this issue.

[2]These surcharges do not apply to violations committed by the operators of motorcycles, motor-driven cycles, motorized pedalcycles or recreational vehicles not intended for highway use. 75 §6506(a)(7) The amounts received from the surcharges are deposited into the Catastrophic Loss Benefits Continuation Fund. Note: These surcharges may be subject to termination by the Pennsylvania Insurance Commissioner provided there are sufficient funds to cover unfunded catastrophic losses. 75 §6506(b) & (c)

[3]The fines for DWI offenses are doubled if the offense was committed within a designed construction or maintenance area manned by workers acting in their official capacity. 75 §3326(c)

[4]Note: The State's victims' compensation fund does not normally cover damages (e.g. personal injuries) resulting from motor vehicle law violations (e.g., DWI). 71 §180-7 et seq. & *Price v. Crime Victim's Comp. Bd.,* 546 A.2d 763 (Pa.Cmwlth. 1988)

Special Note: The DWI law would appear to mandate the indicated minimum imprisonment sentences. 75 §3731(e) However, other provisions provide that, as an alternative to mandatory imprisonment, either a 1st or subsequent offender may be sentenced either to residential inpatient rehabilitation or to house arrest-electronic surveillance along with drug and alcohol treatment. The law does not specify a minimum mandatory period of time a defendant has to be in one of these alternative programs. However, the maximum time an offender can be sentenced to these alternatives is limited to the maximum imprisonment term for the offense. 42 §§9721(a.1), 9763(a) & (c) and *Com. v. Harrison,* 661 A.2d 6 (Pa.Super 1995) Prior to the enactment of these alternatives, the Pennsylvania Supreme Court had held that electronic home monitoring could not be used as a substitute for mandatory incarceration because it was not the equivalent of imprisonment. *Com. v. Kriston,* 588 A.2d 898 (Pa. 1991)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, they are convicted of driving a CMV (1) with a BAC ≥0.04 (percent by weight of alcohol in the blood See Footnote No. 1 on p. 3-401.) or (2) while under the influence of alcohol or a controlled substance. For either (1) a subsequent conviction or (2) a combination of two or more convictions of any of the above listed items, the "disqualification" is for life (10 yrs mand). Title 75 §3731(i)(4) makes it illegal to operate a CMV with a BAC ≥0.04; a person who violates this provision is subject to the same criminal sanctions as for any other DWI offense. A person is "disqualified" from operating a CMV for 1 yr if, while operating a CMV, they refuse to submit a chemical test for either an alcohol concentration or the presence of controlled substances. In addition, a CMV operator must be placed "out-of-service" for 24 hours if they have any amount of alcohol in their system. A person, who operates a CMV with any amount of alcohol in their system, commits a summary offense and is subject to a fine of $100. 75 §§1603, 1611, 1612, 1613 & 3731(i)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	**ADR Program:** Court supervision for not less than six (6) months if counseling or treatment is not necessary. However, if counseling or treatment is necessary, court supervision must be for not less than 12 months. 75 §3731(e)(6)(v)
Administrative Licensing Actions	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	
None	
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	**Susp** 75 §§1532(b)(3) & 3731(e)(6)(ii)
Term of License Withdrawal (Days, Months, Years, etc.):	**12 mos** (1st offenders in ARD program, 1 to 12 mos[1&3]) **Persons Under 18 Years Old.** For person under 18 yrs old, 6 mos license susp provided the offender is placed under "home supervision via a "consent decree". 42 §6340 & 75 §1532(b)(3)
Mandatory Minimum Term of Withdrawal:	12 mos or for 1st offenders, if accepted into ARD program, 1 mo[1&3] An occupational or probationary license is not available. 75 §§1553(d)(6) & (8) and 1554(f)(8) & (10)
Other:	
Rehabilitation:	
Alcohol Education:	**Yes**[2&3]
Alcohol Treatment:	**Yes**[2&3]
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Yes (Discretionary)** Vehicle forfeiture for a DWI offense under the "common law". *Commonwealth v. Crosby,* 568 A.2d 233 (Pa.Super. 1990)
Terms Upon Which Vehicle Will Be Released:	
Other:	

[1]See Habitual Traffic Offender Law on p. 3-406.
[2]1) Every convicted person must take and pass an approved alcohol highway safety class. 2) A Court may order participation (successful) in an individual or group outpatient intervention program to treat substance abuse. Participation may be ordered for up to 2 yrs. 3) If a convicted person is found to be a "chronic" abuser, who represents a "demonstrated and serious" threat, he may be ordered (committed) into treatment at a DOH approved facility. 75 §1548
Required counseling or treatment under ARD. 75 §3731(e)(6)
[3]If a court orders a person to attend a treatment program, the person must successfully complete such a program before their license can be restored. 75 §1541(d) I.e., a person will not be eligible for driving privileges even after the suspension period has expired until they complete the treatment program. Second and subsequent offenders are required to attend a treatment program via court order. 75 §1548(b) & (d)

Sanctions Following a Conviction for a DWI Offense: (continued)

Miscellaneous Sanctions Not Included Elsewhere:	**Laboratory Costs.** A defendant may be required to pay the costs associated with (1) laboratory services for BAC testing and (2) any court appearances by laboratory technicians. 42 §1725.3

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes**[1] 18 §§1101, 1103, & 1104 and 75 §§3732 & 3735.
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Misd 1st degree (non-alcohol related death 75 §3732)-Not more than **5 yrs** 18 §1104(1); Felony 2nd degree (alcohol related death 75 §3735)-Not more than **10 yrs** 18 §1103(2)
Mandatory Minimum Term:	Misd 1st Degree (non-alcohol related death)-**None**; Felony 2nd Degree (Alcohol related death)-**3 yrs** 75 §3735(a) & (b) and 42 §9721(a.1)
Fine ($ Range):	Misd 1st Degree (Non-alcohol Related Death)-Not more than **$10,000** 18 §1101(3); Felony 2nd Degree (Alcohol related death)-Not more than **$25,000** 18 §1101(1)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	See Habitual Traffic Offender Law on p. 3-406.
Licensing Authorized and Type of Action:	Misd 1st Degree (Non-Alcohol Related Death)-**Rev**; Felony 2nd Degree (Alcohol Related Death)-**Rev** 75 §1532(a)(2) & (3)
Length of Term of Licensing Withdrawal:	Misd 1st Degree (Non-Alcohol Related Death)-**1 yr**; Felony 2nd Degree (Alcohol Related Death)-**1 yr** 75 §1532(a)(2) & (3)
Mandatory Action--Minimum Length of License Withdrawal:	Misd 1st Degree (Non-Alcohol Related Death)-**1 yr**; Felony 2nd Degree (Alcohol Related Death)-**1 yr** An occupational or probationary license is not available. 75 §§1532(a)(2) & (3), 1553(a)(2) and 1554(f)(11)
Other:	See Laboratory Costs under Miscellaneous DWI Sanctions above.

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See the Special Note and Injury or Death on p. 3-406.
Sanction:	
Criminal:	
Imprisonment (Term):	Summary Offense-Not less than **90 dys**[2&3] 75 §1543(b)
Mandatory Minimum Term of Imprisonment:	**90 dys**[3] 75 §§1543(b) & 42 §9721(A.1) See Footnote No. 2 on p. 3-406.

[1]A person can also be charged with involuntary manslaughter in situations where they have caused a death related to a drunk driving offense. *Com. v. Huckleberry,* 631 A.2d 1329 (Pa.Super. 1993)

[2]These sanctions also apply if a person drives in violation of either a susp or rev imposed either as a condition of ARD or as a result of a refusal to submit to a chemical test under the implied consent law.

[3]For a subsequent offense, there is a jail term of not more than 6 mos and/or a fine of $200 to $1,000. 75 §6503

Other Criminal Actions Related to DWI: (continued)

Fine ($ Range):	**$1,000**[1] 75 §1543(b)
Mandatory Minimum Fine:	**$1,000**[1] 75 §§1543(b)[2]
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Rev/Susp** 75 §1543(c)
Length of Term of License Withdrawal Action:	If based on a susp-original susp. extended of an additional period of **1 yr** If based on a rev-original rev. extended of an additional period of **2 yrs** 75 §1543(c)
Mandatory Term of License Withdrawal Action:	Same as above. An occupational or probationary license is not available. 75 §§1553(d)(15) & 1554(f)(12)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes**
Grounds for Being Declared an Habitual Offender:	3 convictions of any one or more of the following w/n a 5-yr period: 1) serious traffic offense (e.g., DWI, reckless driving, veh homicide); or 2) leaving the scene of an accident where there has been either a death, injury or property damage. 75 §1542
Term of License Rev While Under Habitual Offender Status:	**5 yrs** or for another offense committed w/n 5 yrs, an additional rev period of 2 yrs. 75 §1542
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

[1]For a subsequent offense, there is a jail term of not more than 6 mos and/or a fine of $200 to $1,000. 75 §6503

[2]*Com. v. Hill,* 549 A.2d 583 (Pa.Super. 1988), & *Com. v. Hoover,* 494 A.2d 1131 (Pa.Super. 1985)

Special Note: It is a summary offense either (1) with a fine of $1,000, to operate a CMV while under a CDL out-of-service order based on driving with alcohol in the body, (2) with a fine of $500 for a 1st offense and a fine of $500 to $1,500 for a subsequent one, to operate a CMV during an alcohol related disqualification or (3) with an imprisonment term of 6 mos and/or a fine of $1,000, to operate a CMV during an alcohol-hazardous materials related disqualification. 75 §1606(c) & (d)

Injury or Death. I. A driver, who causes an accident which results in injury to another person while their license is either suspended, revoked or canceled, commits a 2nd degree Misd. and is subject to an imprisonment term of not more than 2 yrs and/or a fine of not more than $5,000. II. A driver, who causes an accident which results in either serious injury or death to another person while their license is either suspended, revoked or canceled, commits a 3rd degree Felony and is subject to an imprisonment term of not more than 7 yrs and/or a fine of not more than $15,000. A "serious bodily injury" is defined to mean "any bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ." For either offense, the vehicle used therein may be forfeited. 18 §§1101(2) & (4), 1103(3), 1104(2) and 75 §3742.1

Other State Laws Related To Alcohol Use

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** 75 §3749[1] Urine samples may also be taken.
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** If > 15 yrs old and died w/n 4 hrs of the accident.
Vehicle Passengers:	**Yes** But only if the driver of the veh cannot be determined.
Pedestrian:	**Yes** If > 15 yrs old and died w/n 4 hrs of the accident.
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff. 1935) 1 §1991, 18 §6308 & 47 §4-493(1)
Minimum Age (Years) Possession:	**21** 18 §6308
Minimum Age (Years) Consumption:	**21** 18 §6308
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** 47 §4-497[1&2]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Jardine v. Upper Darby Lodge No. 1973 Inc.*, 198 A.2d 550 (Pa. 1964), & *Matthews v. Konieczny*, 527 A.2d 508 (Pa. 1987)[2]
Dram Shop Actions-Social Hosts:	**Yes Limited** *Congini v. Porterville Valve Co.*, 470 A.2d 515 (Pa. 1983) This case limited liability of social hosts to the actions of intoxicated minor guests.[3] See also *Klein v. Raysinger*, 470 A.2d 507 (Pa. 1983)[4], where the court found no social host liability for the actions of adult guests.[5] See Footnote No. 6.
Other:	**None**

[1]The law applies to either licensees or their employees and if the "customers" are "visibly intoxicated". *Detwiler v. Brumbaugh*, 656 A.2d 944 (Pa.Super 1995)

[2]The term "customer" does not include minors. A licensee can be held liable under the "common law" (not the dram shop act) for the injuries caused by an "inebriated" minor who has been sold alcoholic beverages even though such minor does not appear to be "visibly intoxicated". In fact, in the *Matthews* case, a licensee wa held liable for the actions of inebriated minors notwithstanding the fact the licensee did not sell them alcoholic beverages. I.e., liability occurred even though the injury causing minor received the alcoholic beverage from another minor who had purchased such beverages illegally from the licensee.

[3]*Macleary v. Hines*, 817 F.2d 1081 (3rd Cir. 1987), & *Orner v. Mallick*, 527 A.2d 521 (Pa. 1987) Note: If adult (parent) social hosts are not at the residence and have not given permission for a minor social host to furnish alcoholic beverages to minor guests, the adult (parents) social host are not liabile for the injuries sustained by an intoxicated minor guest who was served such beverages by the minor social host. *Maxwell v. Keas*, 639 A.2d 1215 (Pa.Super. 1994)

[4]*Bemis v. Gumbeski*, 534 A.2d 1099 (Pa.Super. 1987), & *Sites v. Cloonan*, 477 A.2d 547 (Pa.Super. 1994)

[5]A social host cannot be held liable for the injures caused to a third person by an intoxicated minor guest, if the host did not "knowingly furnish" alcoholic beverages to such minor guest. *Alumni Ass'n v. Sullivan*, 572 A.2d 1209 (Pa. 1990)

[6]Note: There is contrary case law as to whether a minor, a person under 21 yrs old, can be held liable as a social host where the injury causing guest is also a minor. *Kapres v. Heller*, 612 A.2d 989 (Pa.Super. 1992) (held against such liability), & *Muntz v. Com., Dept. of Transp.*, 630 A.2d 524 (Pa.Cmwlth. 1993) (held in favor of such liability)

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** 47 §§4-493(1) & 4-494(a)
Term of Imprisonment:	**3 mos to 1 yr**
Fine ($ Range):	Not more than **$5,000**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** or liquor control board may impose a fine of $50 to $1,000. 3rd or sub. off (w/n 4 yrs)-mand susp/rev 47 §4-471
Length of Term of License Withdrawal:	**3 yrs** if revoked (1 yr for location unless ownership changes hands, including immediate family members.); if susp, indeterminate 47 §4-471
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd**[1] 47 §§4-493(1) & 4-494(a)
Term of Imprisonment:	**3 mos to 1 yr**
Fine ($ Range):	Not more than **$5,000**
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** or Liquor Control Board may impose a fine of $1,000 to $5,000 3rd or sub. off (w/n 4 yrs)-mand susp/rev 47 §4-471
Length of Term License Withdrawal:	**3 yrs** if revoked (1 yr for structure unless ownership changes hands, including immediate family); if susp, indeterminate
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes**[2] driver only 75 §3715

[1]It is a 3rd degree misd. to "knowingly sell" alcoholic beverages to a minor. 18 §6310.1 The sanctions for this offense are as follows: 1st off-Jail for not more than 1 yr; fine $1,000 (mand) to $2,500; 2nd or sub. off-Jail for not more than 1 yr; fine-$2,500 (mand). 18 §§1101(5), 1104(3) & 6310.1(c)
[2]Also applies to the consumption of "controlled substances". 75 §3715

JURISDICTION:	**PUERTO RICO**
General Reference:	Laws of Puerto Rico Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating drinks 9 §1041(a)
Illegal Per Se Law (BAC):	**None**
Presumption (BAC):	≥**0.10**[1] 9 §1041(b)(2) ≥**0.05**[1] for operators of trucks, busses, school busses, heavy motor vehicles and public service motor vehicles 9 §1041(b)(3)
Types of Drugs/Drugs and Alcohol:	Under the effects of (1) **Any Narcotic Drug**, (2) Marihuana or (3) a Depressing or Stimulating Substance 9 §1045
Other:	**None**

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** 9 §1043(a)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** 9 §1043(b)
Implied Consent Law Applies to Drugs (Yes/No):	**No** 9 §1043(b)
Refusal to Submit to Chemical Test Admitted into Evidence:	n.a.
Other Information:	**None**

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** 9 §1043(a)
Urine:	**No**[2]
Other:	"Any other substance of his body" 9 §1043

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol screening is required. 9 §1042(d)

[1]Standard: Percent of alcohol by volume (grams in 100th milliliters of one (1) percent of volume of blood) in the driver's blood. 9 §1041(b)(2) & (3)

[2]The law states that for "any substance of his body except urine". 9 §1043 However, despite the statutory language, the courts have held that the police may request a urine sample and that the results of a urinalysis for alcohol concentration may be admitted into evidence at a DWI trial. See, e.g., *People v. Santos Vazquez,* 89 P.R.D. 86 (1963).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**Susp - 6 mos to 2 yrs** 1st refusal - mand susp for 6 mos; sub. refusal - mand susp for 1 yr 9 §1044
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	Non-Injury DWI Off (Misd): 1st off-not more than **15 dys**[1]; 2nd off (w/n 5 yrs)-**10 to 30 dys**; 3rd off-**30 to 60 dys**; subsequent off-**60 dys to 6 mos** Injury Related DWI Off: 1st off (Misd)-**30 to 90 dys**[1]; 2nd off (Misd) (w/n 5 yrs)-**90 dys to 6 mos**; 3rd and subsequent off (Felony)-**fixed jail term of 1 yr**[3] Serious Injury Related DWI Off (Felony): **fixed jail term of 1 yr**[3] 9 §1042
Mandatory Minimum Term:	Non-Injury DWI Off (Misd)-1st off-**None**[1]; 2nd off (w/n 5 yrs)-**24 con. hrs**[2]; 3rd off-**30 dys**; subsequent off-**60 dys** Injury Related DWI Off: 1st off (Misd)-**None**[1]; 2nd off (Misd) (w/n 5 yrs)-**24 con. hrs**[2]; 3rd and subsequent off (Felony)-**6 mos and 1 dy**[3] Serious Injury Related DWI Off (Felony): **6 mos and 1 dy**[3] 9 §1042

[1]For 1st offenses, "The effects of the sentence" may be "suspended" if the defendant meets the following three (3) conditions. (1) They have not refused to submit to a BAC chemical test. (2) Their BAC was of between 0.10 and 0.14 (or 0.05 and 0.10 if operating either a truck, bus, school bus, heavy motor vehicle or public service motor vehicle). And, (3) they agree to participate in an alcohol/drug rehabilitation program. 9 §1042(f)

[2]For 2nd offenses, "The effects of the sentence" of imprisonment may be "suspended" if the defendant meets the following three (3) conditions. (1) They have not refused to submit to a BAC chemical test. (2) Their BAC was between 0.10 and 0.14 (or 0.05 and 0.10 if operating either a truck, bus, school bus, heavy motor vehicle or public service motor vehicle). And, (3) they agree either (1) to serve "non-domiciliary" confinement for an uninterrupted" 24 hr period or (2) to participate in 10 dys of community service. 9 §1042(m)

[3]For aggravating circumstances, the imprisonment sanction may be increased to 3 yrs. For extenuating circumstances, the imprisonment sanction may be reduced to 6 mos and 1 dy. 9 §1042(b)(1) & (2)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:	
Amount ($ Range):	Non-Injury DWI Off (Misd)-1st off-not more than **$100 to $300**[1]; 2nd off (w/n 5 yrs)-**$200 to $400**; 3rd off-**$300 to $500**; subsequent off-**$400 to $500** Injury Related DWI Off: 1st off (Misd)-**$200 to $500**[1]; 2nd off (Misd) (w/n 5 yrs)-**$300 to $500**; 3rd and subsequent off (Felony)-**None** Serious Injury Related DWI Off (Felony): **None** 9 §1042
Mandatory Min. Fine ($):	All offs-**None**
Other Penalties:	
Community Service:	**Yes** For 2nd off (either non-injury or injury DWI offs)-**10 dys** of community service in lieu of imprisonment. 9 §1042(m) See Footnote No. 2 on p. 3-410.
Restitution (eg Victim's Fund):	**Yes** Paid by the defendant[2] 33 §3212
Other:	A defendant may be ordered to take and pass a driver improvement course. 9 §1042(h)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	**None**
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	**Susp, Restriction or Rev** 9 §1042(n)
Term of License Withdrawal (Days, Months, Years, etc.):	For either non-injury, injury or serious injury DWI offs: 1st off-**up to 3 mos**[1]; 2nd off (w/n 5 yrs)-**3 mos-2 yrs**; 3rd off-**3 yrs**; 4th off-**permanent rev** 9 §1042(n)
Mandatory Minimum Term of Withdrawal:	See Rehabilitation below. Note: There is a hardship licensing provision. 9 §1042(i)
Other:	
Rehabilitation:	
Alcohol Education:	License susp, restriction or rev until the defendant participates in and passes a driver improvement course or until the agency in charge of rehabilitation certifies that the defendant is qualified to drive. 9 §1042(h)

[1]See Footnote No. 1 on p. 3-410.
[2]Payment cannot be more than $500.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Alcohol Treatment:	
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
Jurisdiction Has Such a Law:	**Yes** There are two vehicle homicide offs. (1) Involuntary manslaughter while operating a motor vehicle (Misdemeanor) 33 §4005; (2) Death caused by gross or willful negligence in driving a motor vehicle (Felony) 33 §§3044 & 4006
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Misdemeanor off-**a fixed term of 1 yr** (3 yrs if there are aggravating circumstances; 6 mos and 1 dy if there are extenuating circumstances.); felony off-**a fixed term of 6 yrs** (10 yrs if there are aggravating circumstances; 4 yrs if there are extenuating circumstances.)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Misdemeanor off-**$3,000**; felony off-**None**
Mandatory Minimum Fine:	**None**
	Administrative Licensing Action:
Licensing Authorized and Type of Action:	**Rev** 33 §4007
Length of Term of Licensing Withdrawal:	**1 yr** 33 §4007
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr** 33 §4007
Other:	**Restitution** A defendant may be ordered to pay restitution. The following maximum payments may be imposed: For a misd.-$500 and for a felony-$5,000. 33 §3212

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	
Sanction:	
Criminal:	
Imprisonment (Term):	1st off (Misd)-**1 to 3 mos**; sub. off (Misd)-**3 to 6 mos** 9 §§721(13) & 722(d)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	1st off-**$200 to $500**; sub. off-**none**
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**None**
Length of Term of License Withdrawal Action:	
Mandatory Term of License Withdrawal Action:	
Habitual Traffic Offender Law:	
Jurisdiction Has Such Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** 9 §1043
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**18** 13 §6083 (Sales only) (Year Eff: 1969)
Minimum Age (Years) Possession:	**None**
Minimum Age (Years) Consumption:	**None**
Dram Shop Laws and Related Legal Actions:	
Jurisdiction Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No**
Dram Shop Actions-Social Hosts:	**No**
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**None**
Term of Imprisonment:	
Fine ($ Range):	
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**None**
Length of Term of License Withdrawal:	

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd**[1] 13 §6107
Term of Imprisonment:	**30 dys to 6 mos**[2]
Fine ($ Range):	**$100 to 500**[2]
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** 13 §6093
Length of Term License Withdrawal:	Indeterminate
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**No**

[1]There are two other provisions under Puerto Rico law that make it an offense to sell alcoholic beverages to a person under the legal drinking age. (1) Sanctions against a person (Misd) Jail: 25 dys to 6 mos; fine: $25 to $500. 33 §§1021 & 3035 (2) Sanctions against dealers. Misd. Jail: 30 dys to 1 yr; fine: $100 to $1,000. 13 §§6083 & 6116

[2]An administrative fine of not more than $2,000 may be imposed at any time before a misd. trial of an alcohol offense.

STATE:	**RHODE ISLAND**
General Reference:	General Laws of Rhode Island

Basis for a DWI Charge:

Standard DWI Offince:	Under the influence of intoxicating liquor §31-27-2(a)
Illegal Per Se Law (BAC):	**≥0.10**[1] and **Any Blood "Presence" of a Scheduled Controlled Substance**[2] §31-27-2(b)(1) & (2) Persons under 21 years old who have a BAC **≥0.02 but <0.10**[3] are considered to have been driving "while impaired" which is not a criminal offense. §§31-27-2.5(d) & (g) and 31-27-2.7
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol"	Under the influence of (1) **Any Drug**, (2) Toluene, (3) any Controlled Substance or (4) Any Combination of These Substances and Intoxicating Liquor §31-27-2(a)
Other:	**DWI Serious Bodily Injury Offense.** Causing a serious bodily injury[4] to a person while under the influence of any intoxicating liquor, toluene or any controlled substance. §31-27-2.6(a) For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §31-27-2.3
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[5]
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §31-27-2.1
Refusal to Submit to Chemical Test Admitted into Evidence:	Note: There is no statutory or case law on this subject.
Other Information:	**None**

[1]Standard: Percent by weight of alcohol in the blood. §31-27-2(b) However, §31-27-2(e) provides that percent by weight of alcohol in the blood is to be based upon milligrams of alcohol per 100 cubic centimeters of blood.
[2]**Comment:** The law does not appear to provide for an exemption for persons who are legally entitled to use a scheduled controlled substance.
[3]Standard: Blood alcohol concentration is based upon percent by weight. §§31-27-2.5(d) & 31-27-2.7 **Comment:** There are no provisions in these sections that further defines this standard.
[4]A "serious bodily injury" is defined as a "physical injury that creates a substantial risk of death or causes serious physical disfigurement or protracted loss or impairment of the function of any bodily member or organ." §31-27-2.6(b)
[5]A request to submit to a chemical test is based on "reasonable grounds" of driving while under the influence of intoxicating liquor. §31-27-2.1

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is "suspended" for at least 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if they are convicted of driving a CMV (1) with a BAC ≥0.04 (Standard: Blood alcohol concentration is based upon percent by weight. There is no provision in the CMV law that further defines this standard.), (2) while under the influence of alcohol or controlled substances or (3) of a refusal to submit to a chemical test. For a second violation of any of the above listed items, a person's privilege to operated a CMV is "revoked" for life (10 yrs mand). In addition, a CMV operator who has any alcohol in their system must "cease" to operate a CMV for 24 hours. Note: A CMV operator commits a "regular" DWI offense if they should operate a CMV with a BAC ≥0.04. §§31-10.3-3(9), (11), (13) & (28) and 31-10.3-31

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** However, there is an exception on religious grounds. §§31-27-2 & 31-27-2.1
Urine:	**Yes** §§31-27-2 & 31-27-2.1
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol Assessment (Not Mandatory) §31-27-2(d)(7)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	Administrative fine-**$30** §§31-27-2.3(B) & 31-41-4
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	1st refusal-**$200 to $500** and **10 to 60 hrs of public service**; 2nd refusal (w/n a 5 yr period)-**$300 to $500**; 3rd and subsequent refusal (w/n a 5 yr period)-**$400 to $500** In addition to the above fines, a defendant must pay an assessment fee of **$500**. **Special Note:** The imposition of these fines, assessments and/or public community service is mandatory. §31-27-2.1
Administrative Licensing Action (Susp/Rev):	1st Refusal-**Susp 3 to 6 mos** (3 mos mand) (For persons under 18 years old-mandatory susp for 6 mos §31-27-2.5(a)); 2nd refusal (w/n 5 yr period)-**Susp 1 to 2 yrs** (1 yr mand); 3rd and subsequent refusal (w/n 5 yr period)-**Susp 2 to 3 yrs** (2 yrs mand) §31-27-2.1
Other:	1st Refusal-Attendance at a DWI class or alcohol/drug treatment program; 2nd refusal (w/n 5 yr period)-Attendance at an alcohol/drug treatment program; 3rd and subsequent refusal (w/n 5 yr period)-Attendance at an alcohol/drug treatment program **Special Note:** Attendance at these classes or programs is required. **Vehicle Registration Suspension.** See Vehicle Impoundment/Confiscation on p. 3-420.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	A Non-Injury DWI Off is a Misd §31-27-2(a) & (b)(2) 1st off-Not more than **1 yr**; 2nd off (w/n 5 yrs)-**10 dys to 1 yr**; 3rd and subsequent offs (w/n 5 yrs)-**6 mos to 1 yr**; §31-27-2(d) DWI serious bodily injury offs-Felony): 1st off-**1 to 10 yrs**; 2nd and sub. off (w/n 5 yrs)-**2 to 15 yrs** §§11-1-2 & 31-27-2.6 The sanctions for young persons who committ certain alcohol driving offenses are contained in the Miscellaneous Sanctions section on p. 3-421.
Mandatory Minimum Term:	1st off-**None**; 2nd off (w/n 5 yrs)-**10 dys containing at least 48 cons hrs**[1]; 3rd and subsequent offs (w/n 5 yrs)-**6 mos containing at least 48 cons hrs**[1] For DWI serious injury offs-**None**
Fine:	
Amount ($ Range):	1st off-**$100-$300**; 2nd off (w/n 5 yrs)-**$400**; 3rd and subsequent offs (w/n 5 yrs)-**$400** DWI serious injury offs: 1st off-**$1,000 to $5,000**; 2nd and sub. off (w/n 5 yrs)-**$3,000 to $10,000** §31-27-2.6 See Criminal Offender's Fees below.
Mandatory Min. Fine ($):	1st off-**$100**[1]; 2nd off (w/n 5 yrs)-**$400**[1]; 3rd and subsequent offs (w/n 5 yrs)-**$400**[1] §31-27-2(d) For DWI serious injury off-**None**
Other Penalties:	
Community Service:	1st off-**10 to 60 hrs**[1] of "Public Community Restitution" (i.e., Community Service) §§31-27-2(d)(1) & 31-27-21
Restitution (eg Victim's Fund)	**Yes** Victim's compensation fund §12-25-17 et seq.[2&3] See Criminal Offender's Fees below.
Other:	**Highway Assessment Fee.** In addition to the above fines, a defendant must pay a highway assessment fee of **$500**.[1] §31-27-2(d)(5)(i) **EMS Special Assessment.** In addition to any fine, an offender must be assessed **$1**. §31-27-18 **Comment.** These funds are deposited into the general State fund and, therefore, do not appear to be obligated for EMS functions.

[1]Neither jail, fines, assessments, "public community restitution" (i.e., community service) nor any other drunk driving offense sanction can be suspended. §31-27-2(i)
[2]Awards are limited to $25,000 plus attorney's fees. §12-25-22(b)
[3]Note: Citations are to the Criminal Injuries Compensation Act of 1996.

Criminal Offender's Fees. Persons, who are convicted of a criminal offense, whether violent or not, must pay the following fees. These fees fund the victims of violent crimes fund and are used to in part compensate victims of DWI related deaths or injuries. Misd Off: Either $30 or 15% of the fine imposed which ever is the greater amount. Felony Off (where imprisonment is <5 yrs): Either $90 or 15% of the fine imposed which ever is the greater amount. Felony Off (where imprisonment is ≥5 yrs): Either $150 or 15% of the fine imposed which ever is the greater amount. §12-25-28(a) & (b)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	A license may be susp for not more than 1 yr if a person has "committed" an off that requires rev/susp (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction. §31-11-7(a)
Post DWI Conviction Licensing Action:	See School Bus Operators below.
Type of Licensing Action (Susp/Rev):	**Susp** all non-injury DWI offs[1] For DWI serious injury offs-**Rev** §§31-27-2(d) & 31-27-2.6 For young persons, see Miscellaneous Sanctions on p. 3-421.
Term of License Withdrawal (Days, Months, Years, etc.):	DWI non-injury offs: 1st off-**3 to 6 mos**; 2nd off-**1 to 2 yrs**; 3rd off-**2 to 3 yrs** §31-27-2(d) DWI serious injury offs: 1st off-up to **2 yrs**; 2nd and sub. off (w/n 5 yrs)-up to **4 yrs** §31-27-2.6
Mandatory Minimum Term of Withdrawal:	DWI non-injury offs: 1st off-**3 mos**; 2nd off-**1 yr**; 3rd off-**2 yrs**; §31-27-2(d) & (i) DWI serious injury offs: **None**
Other:	
Rehabilitation:	
Alcohol Education:	1st off-Alcohol (DWI)/drug education course and/or treatment program (Required) See "DWI Course Fees" below.
Alcohol Treatment:	2nd off-**Yes** (Required); 3rd off-**Yes** (Required) 1st or subsequent DWI Serious Injury Offs: A court may order a person to successfully complete an alcohol or drug treatment program. §31-27-2.6(c) & (d)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Yes Forfeiture (Discretionary)** 3rd or sub. DWI off (w/n 5 yrs)-A person's vehicle may be forfeited (confiscated) by the State §31-27-2(d)(3)(ii)
Terms Upon Which Vehicle Will Be Released:	
Other:	**Vehicle Registration Suspension.** A person, who has had their license suspended or revoked for any reason, may also have the registrations of any vehicles they own suspended. However, such registrations are not suspended if financial responsibility is provided. §31-32-4(b)

[1]A person convicted of driving while under the influence of a "controlled substance" may have their license revoked for 1 year. §31-11-6(2)

School Bus Operators. A person may have their privileges to operate a school bus suspended for up to 5 yrs if they have been convicted of a criminal "motor vehicle driving offense" while driving any vehicle or of any alcohol or drug related motor vehicle driving related offense. §31-10.3-31(j)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

DWI Course Fees. A 1st offender must pay the following fees that are associated with attending an alcohol/drug education course: (1) A course fee of not more than $25; (2) a $75 fee for use of the Admin. Adj. Div.; and, (3) a $100 fee to the Dept. of Health Laboratory. §31-27-2(j)
Ignition Interlock. A 2nd or sub offender may be required to operate motor vehicles equipped with "ignition interlock" devices. This requirement may last up to 2 yrs following the completion of any sanction. §§31-27-2(d)(2) & (3) and 31-27-2.8
Shock Incarceration. Eighteen (18) to 28 year old non violent offenders, who have never been incarcerated following a conviction, are eligible to participate in a "shock incarceration" program. "The program shall include extensive physical regimentation, drug and alcohol abuse counseling, behavioral counseling and mandatory education courses and community services." §12-19-2.2 **Comment:** This program does not appear to interfere with the mandatory jail sanctions that must be imposed on 2nd and sub drunk driving offenders. §12-19-23.2
Special Drunk Driving Offense Fee. All DWI offenders must pay a special fee per the schedule listed in Footnote No. 1. §31-27-2(d)(5)(ii)

DWI Offenders Under 18 Years Old. In addition, the following sanctions apply to persons convicted of DWI who are under 18 years old: 1st offense-a highway assessment fine of not more than $500, 10 to 60 hrs. of "public community restitution" (i.e., community service) & a 6 to 18 mo. lic. susp (6 mos mand); 2nd and subsequent offense-confinement in a training school for not more than one (1) yr., a fine of not more than $500 and license susp until the person is 21 (mand). §31-27-2(d)(6)

Persons Under 21 Years Old with a BAC ≥0.02 but <0.01. There are two separate provisions of law that provided for sanctions against young persons who drive while impaired who drive with a BAC ≥0.02 but <0.10. §§31-27-2.5 & 31-27-2.7[2]
I. For persons under 18 years old, who have been found to have been driving while impaired (BAC ≥0.02 but <0.10), the following sanctions apply. For 1st and sub. offs, an assessment fee of $150 or "public community restitution" (i.e., community service) (§31-27-2.5(d)(1)) and the following licensing sanctions: 1st violation-6 to 12 mos susp (6 mos mand); 2nd violation-susp until the person is 21 years old (appears mand); 3rd and subsequent violations-suspension until the person is 21 yrs old plus an additional 2 yr susp (appears mand) §§31-27-2.5(d)(2), (3) & (4) and 31-27-21

[1]This fee will be $173 for fiscal years 1996 through 1999 and $86 for fiscal years 2000 through 2006.
[2]Note: A violation of these sections is not a criminal offense.

Sanctions Following a Conviction for a DWI Offense:
(continued)

II. For persons under 21 but ≥18 years old, who have been found to have been driving while impaired (BAC ≥0.02 but <0.10), the following sanctions apply. 1st violation: A fine of not more than $250; "public community restitution" (i.e., community service) of 30 hrs; and, license suspension-1 to 3 mos (1 mo mand); 2nd and sub. violations: A fine of not more than $250; a highway safety assessment fee of $300 (mand); 60 hrs of "public community restitution" (i.e., community service); and, license suspension-3 to 6 mos (3 mos mand). For both 1st and sub. violations, a person may be ordered by the court to participate in either and alcohol education or treatment program. §§31-27-2.7 & 31-27-21

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	See School Bus Operators on p. 3-420.
State Has Such a Law:	**Yes**
Criminal Sanction:	
Imprisonment (Term):	I. Death related DWI offs-felony-1st off - **5 to 15 yrs**; 2nd and subsequent (w/n 5 yrs) - **10 to 20 yrs** §§31-27-2.2 & 11-1-2 II. Non-DWI related driving causing death-felony-Not more than **10 yrs** §§31-27-1 & 11-1-2
Mandatory Minimum Term:	**None**
Fine ($ Range):	I. Death related DWI offs, 1st off - **$5,000 to $10,000**; 2nd and subsequent (w/n 5 yrs) - **$10,000 to $20,000** II. Non-DWI related deaths - **None**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	I. Death related DWI offs, 1st off-**Rev**; 2nd and subsequent (w/n 5 yrs)-**Rev** II. Non-DWI related driving causing death-**Rev** §31-11-6
Length of Term of Licensing Withdrawal:	I. Death related DWI offs, 1st and subsequent offs (w/n 5 yrs)-**5 yrs** II. Non-DWI related driving causing death-**3 yrs**
Mandatory Action--Minimum Length of License Withdrawal:	I. Death related DWI offs, 1st and subsequent offs (w/n 5 yrs)-**5 yrs** II. Non-DWI related driving causing death-**3 yrs**
Other:	1st or subsequent offs: A court may order a person to successfully complete an alcohol or drug treatment program. §31-27-2.2(b)(1) & (2) See Vehicle Impoundment/Confiscation on p. 3-420. See Criminal Offender's Fees on p. 3-419.

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	Where susp or rev is due to either a DWI conviction, a refusal to submit to chemical test, reckless driving, motor veh manslaughter or 3 moving violations in one yr.[1] 1st off (Misd)-**10 dys to 1 yr**;
Imprisonment (Term): (continued)	2nd off (w/n 5 yrs) (Misd)-**6 mos to 1 yr**; 3rd and subsequent offs (w/n 5 yrs) (felony)-**1 to 5 yrs** §§31-11-18.1, 31-27-13 & 31-27-14
Mandatory Minimum Term of Imprisonment:	1st off-**10 dys**; 2nd off (w/n 5 yrs)-**6 mos**; 3rd and subsequent offs (w/n 5 yrs)-**1 yr** §31-11-18.1(d)
Fine ($ Range):	1st off-**$500**; 2nd off (w/n 5 yrs)-**$500**; 3rd and subsequent offs (w/n 5 yrs)-**$1,000 to $5,000** §31-11-18.1, 31-27-13 & 31-27-14 See Criminal Offender's Fees on p. 3-419.
Mandatory Minimum Fine:	1st off-**$500**; 2nd off (w/n 5 yrs)-**$500**; 3rd and subsequent offs (w/n 5 yrs)-**$1,000** §31-11-18.1(d)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev** §31-11-18.1 See Vehicle Impoundment/Confiscation on p. 3-420.
Length of Term of License Withdrawal Action:	For Driving While Susp: 1st & 2nd off-An additional susp period as the licensing agency "**deems proper**"; sub. off-Rev-for an additional period of **1 yr** For Driving While Rev: 1st & sub. off-Rev-for an additional period of **1 yr** §31-11-18.1
Mandatory Term of License Withdrawal Action:	For Driving While Susp: 1st off-for an additional period of **3 mos**; 2nd off-for an additional period of **6 mos**; sub. off-for an additional period of **1 yr** For Driving While Rev: 1st & sub. off-for and additional period of **1 yr** §31-11-18.1

[1]See §31-11-18 for sanctions related to driving after either susp or rev for other traffic law violations.

Special Note: I. The sanctions given appear to apply to the operation of a CMV during a CDL suspension or revocation for an alcohol related offense conviction. §31-11-18.1 II. A person, who does not "cease" to operate a CMV for 24 hrs when required to do so, commits a misdemeanor and is subject to a fine of $150 and CDL revocation for 3 mos. §31-10.3-31(h) III. Under separate provisions of law, a CMV operator, who violates an out-of-service order issued by an authorized Federal or State official pursuant to Federal Regulations, is subject to the following CDL disqualifications: 1st violation-disqualification for 90 dys (mand); 2nd violation (w/n 10 yrs)-disqualification for 1 yr (mand); and, 3rd or subsequent violation (w/n 10 yrs)-disqualification for 3 yrs (mand). A CMV operator, who violates an out-of-service order either while transporting hazardous materials or while driving a CMV designed to transport 15 or more persons, is a CMV operator is to the following CDL disqualifications: 1st violation-disqualification for 180 dys (mand); and, 2nd or subsequent violation (w/n 10 yrs)-disqualification for 2 yrs (mand). In addition to the above disqualifications, the violator is subject to a "penalty" of $1,000. §31-10.3-31(j)

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** §31-40-1 et seq.
Grounds for Being Declared an Habitual Offender:	Three or more convictions within 3 yrs for any of the following: 1) Motor veh manslaughter; 2) DWI (alcohol or drugs); 3) Driving while license suspended or revoked; 4) Willfully operating a motor veh without a license; 5) any felony off using a motor veh; 6) failure to stop and report death/injury after accident driver was involved in; 7) failure of driver to stop and report accident where damages equalled $150 or more; or 8) a combination of six (6) traffic off. convictions where any one conviction could result in license susp/rev for 30 dys or more. §31-40-2
Term of License Rev While Under Habitual Offender Status:	**1-5 yrs** §31-40-7 See Vehicle Impoundment/Confiscation on p. 3-420.
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Felony** §11-1-2
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **5 yrs** §31-4-8
Mandatory Minimum Term of Imprisonment:	The **5 yr** sentence may not be suspended except in cases where the defendant operated a vehicle in order to save life or limb. §31-40-8
Fine ($ Range):	**None**
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1984) §§3-8-1, 3-8-5 & 3-8-6(a)(2)
Minimum Age (Years) Possession:	**21** §3-8-10
Minimum Age (Years) Consumption:	**21** Note: Applies only to licensed premises §3-8-6(a)(2)

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §3-14-1 et seq.[1]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No**
Dram Shop Actions-Social Hosts:	**No** *Ferreira v. Strack,* 652 A.2d 965 (R.I. 1995)[2] & *Marty v. Garcia,* 667 A.2d 282 (R.I. 1995)
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	1st off-**Petty Misd**; 2nd off-**Petty Misd**; 3rd and Subsequent offs-**Misd** §§ 3-8-1, 3-11-5 & 11-1-2
Term of Imprisonment:	1st off-**3 mos**; 2nd off-**6 mos**; 3rd and subsequent offs-Not more than **1 yr**
Fine ($ Range):	1st off-Not more than **$200**; 2nd off-Not more than **$300**; 3rd and subsequent offs-Not more than **$500** See Criminal Offender's Fees on p. 3-419.
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §3-5-23
Length of Term of License Withdrawal:	Susp-Length is not specified §3-5-23; Rev.- **5 yrs** (under §3-5-23)[3]
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Violations**[4] §§3-8-5 & 11-1-2
Term of Imprisonment:	**None**
Fine ($ Range):	1st off-**$250**; 2nd off-**$500**; 3rd and subsequent offs-**$750** If no offense in 3 successive yrs, next off shall be treated as a 1st offense.

[1]Rhode Island's Dram Shop Law is similar to the Model Alcoholic Beverage Retail Licensee Liability Act of 1985. This model law was developed via a grant for the National Institute on Alcohol Abuse and Alcoholism.

[2]The court held that there was no duty of care in a typical social host type dram shop situation. I.e., injured third parties did not have a common law cause of action for negligence against a social host for the injuries cause by an intoxicated guest.

[3]If the revocation is under §3-5-22, the length would be 1 yr.

[4]A licensee who sells alcoholic beverages to one under the legal drinking age can also be charged with a violation of §3-8-1 (as well as §3-8-5). The sanctions for violating §3-8-1 are as follows: 1st off. (petty misd)-imprisonment not more than 3 mos; a fine of not more than $200; 2nd off. (petty misd)-imprisonment for not more than 6 mos; a fine of not more than $300; 3rd and sub. offs. (misd)-imprisonment for not more than 1 yr; a fine of not more than $500. §§3-11-5 & 11-1-2 See Criminal Offender's Fees on p. 3-419.

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §3-5-23
Length of Term License Withdrawal:	Susp-Length is not specified §3-5-23; Rev. - **5 yrs** (under §3-5-23)[1]
Anti-Happy Hour Laws/Regulations:	**Yes** §3-7-26
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Driver only §31-22-21

[1]If the revocation is under §3-5-22, the length would be 1 yr.

STATE:	**SOUTH CAROLINA**
General Reference:	Code of Laws of South Carolina Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol[1] §56-5-2930(1)
Illegal Per Se Law (BAC):	**None**
Presumption (BAC):	≥**0.08**[2&3] §56-5-2950(b)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**, (2) Any Combination of Drugs or Substances or (3) A Combination of Alcohol and Other Drugs or Substances §56-5-2930(2) & (3)
Other:	For Commercial Motor Vehicle Operators, see p. 3-431.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§56-5-2950(a) & 56-5-286(C)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §56-5-2950(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *State v. Miller,* 185 S.E.2d 359 (S.C. 1971), & *City of Columbia v. Ervin,* 500 S.E.2d 483 (S.C. 1998)[4]
Other Information:	A person **must** submit to a chemical test if they have been arrested or if there is probable cause that such person violated §56-5-2945 which makes it illegal to cause great bodily injury or death while in violation of the drunk driving law.[5] §56-5-2946

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes**[6] A breath sample test must be offered first. §56-5-2950(a)
Urine:	**Yes**[6] A breath test must be offered first. §56-5-2950(a)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No** However, alcohol assessment is needed prior license reinstatement. §56-5-2990 (¶2)

[1]"Alcohol" any substance containing any form of alcohol (e.g., ethanol, methanol, propanol, and isopropanol). §56-1-10(16)
[2]South Carolina law uses the term "inferred" instead of "presumed". §56-5-2950(b)(3)
[3]"Alcohol concentration" is defined to mean either (1) grams of alcohol per 100 milliliters of blood or (2) "as determined by the South Carolina Law Enforcement Division for other bodily fluids." §56-1-10(17)
[4]In *Ervin*, an offender refused to submit to a breath test and instead insisted he obtain an independent blood test. A law enforcement officer transported defendant to a medical facility for blood test but the officer did not authorize such a test. The facility's staff refused to perform such test without police authorization. Evidence of refusal to submit to the breath test was admissible.
[5]**Comment:** The enactment of §56-5-2946 and the revisions to the implied consent law (§56-5-2950), all of which occurred in 1998, in effect abrogated the holding in *State v. Mullins,* 489 S.E.2d 923 (S.C. 1997). This case interpreted the implied consent law as prohibiting the taking of blood samples once a person had refused to submit to a breath chemical test.
[6]Additional testing is not authorized if the driver has registered an alcohol concentration ≥0.08. §56-5-2950(a)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal-**90 dy susp**; sub refusal[1] (w/n 10 yrs)-**180 dys** §56-5-2951(A) & (K) These susps are not mand. A person may be issued restricted driving privileges for either employment or college education purposes. §56-5-2951(J) Persons Under 21 Years Old (0.02 violation). 1st refusal-**6 mos susp** (mand); sub refusal[1] (w/n 5 yrs)-**1 yr** (mand) §56-5-286(B), (C) & (F)
Other:	See Temporary Driving Privileges on p. 3-430.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off (Misd)-**48 hrs to 30 dys**; 2nd off (w/n 10 yrs) (Cl C Misd)-**48 hrs to 1 yr**; 3rd off (w/n 10 yrs) (Cl A Misd)-**60 dys to 3 yrs**; 4th and subsequent off (w/n 10 yrs) (Cl F felony)-**1 to 5 yrs** §§16-1-10, 16-1-20, 16-1-90(F), 16-1-100(A) & (C) and 56-5-2940 DWI where there is great bodily injury-**Cl B felony, 30 dys to 10 yrs** §§16-1-10(B) & 56-5-2945
Mandatory Minimum Term:	1st off-**48 hrs**[2]; 2nd off-**48 hrs**[2]; 3rd off-**60 dys**[2]; 4th and subsequent offs-**1 yr**[2] DWI where there is great bodily injury-**30 dys**[2]
Fine:	
Amount ($ Range):	1st off-**$300**; 2nd off-**$2,000 to $5,000**; 3rd off-**$3,500 to $6,000**; 4th off-**None** DWI where there is great bodily injury-**$5,000 to $10,000**
Mandatory Min. Fine ($):	1st off-**$300**; 2nd off-**$1,000**; 3rd off-**$3,500**; 4th off-**None** DWI where is great bodily injury-**$5,000** §§56-5-2940 & 56-5-2945

[1]This licensing sanction also applies if there has been a prior admin. per se violation (for person under 21 yrs old, this includes licensing action for a 0.02 violation) or prior drunk driving offense within the period of time indicated. §§56-1-286(F) & 56-5-2951(K)(2)

[2]I. Secs. 56-5-2940 and 56-5-2945(A)(2) provide that these minimum sanctions are mandatory and, therefore, cannot be either suspended or probated. *State v. Tisdale,* 467 S.E.2d 270 (S.C.App. 1996) However, there are exceptions. (1) An offender may be allowed to participate in out-of-jail **public service work** while serving an incarceration sentence. §24-13-660 Also, (2) the law provides, that notwithstanding other provisions providing for mandatory incarceration, an offender may be sentenced to **home detention** in lieu of incarceration with or without electronic monitoring. §24-13-1530 II. For an alcohol or drug offense for which a person can be imprisoned ≥90 dys, the court may suspend sentence and place the offender in an alcohol and drug rehabilitation center. Upon release from this center, the court must impose a term of probation. The length of this term appears to be discretionary with the court. §§24-13-1930 & 24-13-1950

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:	
Community Service:	Non-Injury DWI Offs: 1st off-A minimum of **48 hrs** in lieu of imprisonment[1]; 2nd off-Not less than **10 dys** in lieu of imprisonment[1]
Restitution (eg Victim's Fund)	**Yes** Victims' Compensation Fund §16-3-1110 et seq.
Other:	**Child Endangerment.** A person ≥18 yrs old, who commits either a drunk driving offense under §56-5-2930 or a death/serious bodily injury drunk driving offense under §56-5-2945 while transporting a child <16 yrs old, is subject to additional jail and fine sanctions which are equal to not more than half maximum jail and fine sanctions for these offenses. These sanctions are mandatory if the jail or fine sanctions have been imposed for the original offense. In addition, a person's driving privileges must be suspended for 60 dys. §56-5-2947 **Mandatory Assessments.** I. In general sessions court and municipal court, a defendant must pay respectively an assessment which is equal to 62% and 74% of the fine actually imposed (i.e., that part of the fine that has not been suspended). §§14-1-206(A) & 14-1-208(A)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Temporary Driving Privileges on p. 3-430.
Administrative Per Se Law:	≥**0.15** BAC (See Footnote No. 3 on p. 3-427.) 1st violation-**30 dy susp**[2]; sub violation[3](w/n 10 yrs)-**60 dy susp**[2] §56-5-2951(A) & (K) Persons Under 21 Years Old-≥**0.02** BAC (See Footnote No. 3 on p. 3-427.) 1st violation-**3 mo susp** (mand); sub violation[3] (w/n 5 yrs)-**6 mo susp** (mand) §56-1-286(A) & (G)
Other:	**None**
Post DWI Conviction Licensing Action:	See the Special Note below.
Type of Licensing Action (Susp/Rev):	1st off[4]-**Susp**; 2nd off[4] (w/n 10 yrs)-**Susp**; 3rd off[4] (w/n 5 or 10 yrs)-**Susp**; 4th and subsequent offs[4] (w/n 10 yrs)-**Rev** §56-5-2990 DWI off where there is great bodily injury-**Susp** §56-5-2945

[1]Home detention may be ordered in lieu of community service. §24-13-1530
[2]These susps are not mand. A person may be issued restricted driving privileges for either employment or college education purposes. §56-5-2951(J)
[3]This licensing sanction applies if there has been either a prior refusal or prior drunk driving offense within the period of time indicated. For persons under 21 yrs old, it also includes a prior violation of the 0.15 admin. per se law. §§56-1-286(F) & 56-5-2951(K)(2)
[4]Note: An off is considered either a §56-5-2930, §56-5-2945 or other alcohol use and driving related law violation. §§56-1-1320 & 56-5-2990.

Special Note: An offender, who is <18 yrs old, may have their license suspended by the court until they reach their 18th birthday. §20-7-1333(B)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**6 mos**; 2nd off (w/n 10 yrs)-**1 yr**; 3rd off (w/n 10 yrs)-**2 yrs**; 3rd off (w/n 5 yrs)-**4 yrs**; 4th and subsequent offs (w/n 10 yrs)-**Permanent** §56-5-2990; DWI off where there is great bodily injury-**Term of imprisonment plus 3 yrs** §56-5-2945
Mandatory Minimum Term of Withdrawal:	1st off - For a 1st DWI off, a provisional license may be issued for the 6-mo susp period provided the defendant participates in an alcohol/drug education/treatment program §§56-1-1320 & 56-1-1330; 2nd off (w/n 10 yrs)-**1 yr**; 3rd off (w/n 10 yrs)-**2 yrs**; 3rd off (w/n 5 yrs)-**4 yrs**; 4th and subsequent offs (w/n 10 yrs)-**7 yrs** (§56-1-385(A)(1)); DWI off where there is great bodily injury-**Term of imprisonment plus 3 yrs**
Other:	
Rehabilitation:	
Alcohol Education:	(1) For suspended licensed drivers, a successful completion of an Alcohol and Drug Safety Action Program prior to license reinstatement (or a special recommendation by the Medical Advisory Board before the license is restored. §56-5-2990 (¶2) For revoked licensed drivers, the license may be reinstated after 5 yrs provided such drivers have been rehabilitated. §56-5-2990 (3) Persons, who have had their driving privileges permanently revoked, must successfully complete an alcohol or drug treatment program before their license can be reinstated. §56-1-385(A)(2)
Alcohol Treatment:	**Yes** See Alcohol Education above and II under Footnote No. 2 on p. 3-428.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Yes** For a 3rd or sub DWI off (w/n 10 yrs), the driver's vehicle **must be forfeited**. §56-5-6240(A)
Terms Upon Which Vehicle Will Be Released:	
Other:	
Miscellaneous Sanctions Not Included Elsewhere:	Under §56-5-3000, the licensing agency shall publish the names and addresses of persons who have had their licenses suspended under §56-5-2990 (i.e., for DWI).

Temporary Driving Privileges (Temporary Alcohol Restricted Driver's License). At the time of arrest, a person, who is subject to licensing action under either the implied consent or the admin. per se laws, may be granted temporary driving privileges until they can obtain a hearing on the issues. However, these driving privileges are conditioned on the person enrolling in an Alcohol and Drug Safety Action Program and requesting a hearing w/n 10 dys of arrest (notice of susp). If a person fails to satisfy either of these two items, they wave their right to a hearing and to obtain a temporary driving privileges. §§56-1-286(M) & 56-5-2951(G)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** I. Cl B Felony if death is based on a DWI off II. Cl E Felony if death is caused by the reckless (non-DWI related) operation of a vehicle (reckless homicide). §§16-1-10, 16-1-20, 16-1-30, 16-1-90, 56-5-2910 & 56-5-2945. Important. See Child Endangerment on p. 3-429.
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	I. Cl B Felony-**1 to 25 yrs**[1] §56-5-2945(A)(2) II. Cl E Felony-not more than **10 yrs**[1] §56-5-2910
Mandatory Minimum Term:	I. Cl B Felony-**1 yr** §56-5-2945(A)(2) See Footnote No. 1 on p. 3-430. II. Cl E Felony-**None**
Fine ($ Range):	I. Cl B Felony -**$10,000 to $25,000** §56-5-2945(A)(2) II. Cl E Felony-**$1,000 to $5000** §56-5-2910
Mandatory Minimum Fine:	I. Cl B Felony-**$10,000** §56-5-2945(A)(2) II. Cl E Felony-**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	I. Cl B Felony-**Susp** §§56-1-280(1) & (2) and 56-5-2945 II. Cl E Felony-**Rev** §§56-1-280(1) & (2) and 56-5-2910
Length of Term of Licensing Withdrawal:	I. Cl B Felony-**Term of imprisonment plus 3 yrs** §56-5-2945 II. Cl E Felony-**5 yrs** §56-5-2910
Mandatory Action--Minimum Length of License Withdrawal:	I. Cl B Felony off-**Term of imprisonment plus 3 yrs** §56-5-2945 II. Cl E Felony-**1 yr**[2] §56-5-2910

[1]**Special Note:** (1) An offender may be allowed to participate in out-of-jail **public service work** while serving an incarceration sentence. §24-13-660 Also, (2) the law provides, that notwithstanding other provisions providing for mandatory incarceration, an offender may be sentenced to **home detention** in lieu of incarceration with or without electronic monitoring. §24-13-1530

[2]After 1 yr, a person may petition the circuit court for license reinstatement. The court may grant either (1) complete or (2) provisional driving privileges. A person, who is granted provisional driving privileges, is allowed to drive only for either employment or educational needs. Note: The court cannot grant either complete or provisional privileges if either intoxicating alcohol, beer, wine, drugs or narcotics were involved in the vehicular accident related to the reckless homicide offense. §56-5-2910(B)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC ≥0.04 (Standard: Grams of alc. per 100 milliliters of blood.), (2) have an alcohol concentration ≥0.04 in "other bodily substances (fluids) as determined by the Law Enforcement Division, (3) are under the influence of alcohol, a controlled substance or a drug which impairs driving ability or (4) refuse to submit to a chemical test for an alcohol concentration. Note: The disqualification section, §56-1-2110(A)(5), appears to only apply to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent section, §56-1-2130, applies to tests for both an alcohol concentration and the presence of other drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any "measurable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§56-1-2030(1), (6), (7), (8), (10), (19) & (21), 56-1-2110, 56-1-2120, 56-1-2130 and 56-1-6190

Other Criminal Actions Related to DWI: (continued)

Other:	**Mandatory Assessments.** In general sessions court, a defendant must pay an assessment which is equal to 62% of the fine actually imposed (i.e., that part of the fine that has not been suspended). §14-1-206(A) **Persons Under 18 Years Old.** An offender, who is <18 yrs old, may have their license suspended by the court until they reach their 18th birthday. §20-7-1333(B)
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	1st off (Misd)-**10 to 30 dys**; 2nd off (w/n 5 yrs) (Misd)-**60 dys to 6 mos**; 3rd and subsequent off (w/n 5 yrs) (Cl A Misd)-**6 mos to 3 yrs** §§16-1-10(C), 16-1-20, 16-1-100(A) & 56-1-460
Mandatory Minimum Term of Imprisonment:	1st off-**10 dys**[1&2]; 2nd off-**60 dys**[1&2]; 3rd and sub off-**6 mos**[1&2] §56-1-460
Fine ($ Range):	1st off-**$200**[3&4]; 2nd off-**$500**[3&4]; 3rd and sub off-**None** §56-1-460
Mandatory Minimum Fine:	**None**[4]
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev** Important: For a 4th or sub off (w/n 5 yrs) of driving while license is susp/rev, the driver's vehicle **must be forfeited**. §56-5-6240(A)
Length of Term of License Withdrawal Action:	**Susp** for a like period of time if the original susp was for a definite period of time. If not, then a susp for 3 mos. If license was revoked, a new license shall not be issued for an additional **1 yr** from the date such person would have otherwise been entitled to apply for a new license. §56-1-460.

[1](1) An offender may be allowed to participate in out-of-jail **public service work** while serving an incarceration sentence. §24-13-660 Also, (2) the law provides, that notwithstanding other provisions providing for mandatory incarceration, an offender may be sentenced to **home detention** in lieu of incarceration with or without electronic monitoring. §24-13-1530

[2]If the case is decided in a magistrate's court, the court is prohibited from suspending sentence and placing the offender on probation in lieu of incarceration. §22-3-800

[3]**Comment:** It is not clear whether a fine sanction can be imposed on a person who has been convicted of driving while suspended or revoked where the original license suspension or revocation was based on a DWI offense conviction.

[4]**Mandatory Assessments.** In general sessions court, a defendant must pay an assessment which is equal to 62% of the fine actually imposed (i.e., that part of the fine that has not been suspended). §14-1-206(A)

Special Note: I. It is a misd to operate a CVM during a CDL disqualification. For a 1st offense, a person is subject to an imprisonment term for 30 dys (mand) and a fine of $200 (mand). For a 2nd offense, a person is subject to an imprisonment term for 60 con dys (mand) and a fine of $500 (mand). And, for a subsequent offense, a person is subject to an imprisonment term for 90 dys (mand) to 6 mos. §§16-1-10(C), 56-1-460 and 56-1-2070(D) II. A person, who operates a CMV while their CDL is under an out-of-service order, is subject to the following sanctions: 1st violation-disqualification for 90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-disqualification for 1 (mand) to 5 yrs; and, 3rd or subsequent violation (w/n 10 yrs)-disqualification for 3 (mand) to 5 yrs. In addition, 1st or subsequent offenders are subject to a civil penalty of $1,000 to $2,500. If the offender was operating a CMV either while (1) transporting either hazardous materials or (2) operating a vehicle designed to transport more than 15 persons, they are subject to the following sanctions: 1st violation-disqualification for 180 dys (mand) to 2 yrs; and, 2nd or subsequent (w/n 10 yrs)-disqualification for 3 (mand) to 5 yrs. In addition, 1st or subsequent offenders are subject to a civil penalty of $1,000 to $2,500. §56-1-2070(E)

Other Criminal Actions Related to DWI: (continued)

Persons Under 18 Years Old. An offender, who is <18 yrs old, may have their license suspended by the court until they reach their 18th birthday. §20-7-1333(B)

Mandatory Term of License Withdrawal Action: **None**

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No): **Yes** §56-1-1010 et seq.

Grounds for Being Declared an Habitual Offender: 3 or more serious off convictions or 10 or more convictions for violations rated at 4 points or more under the point system within a period of 3 yrs §56-1-1020(a) & (b)

Term of License Rev While Under Habitual Offender Status: **5 yrs** and until the court thereafter restores the driving privilege. After 1 yr, this period may be reduced to 2 yrs upon a showing of "good cause." §56-1-1090(a) & (c)

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status: **Felony** §56-1-1100

Sanctions Following a Conviction of Driving While on Habitual Offender Status:

Imprisonment (Term): Not more than **5 yrs**[1] §56-1-1100

Mandatory Minimum Term of Imprisonment: **None**

Fine ($ Range): **None**

Mandatory Minimum Fine ($): **N/A**

Licensing Actions (Specify): **None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No): **Yes** §17-7-80

BAC Chemical Test Is Given to the the Following Persons:

Driver: **Yes**

Vehicle Passengers: **No**

Pedestrian: **Yes** (16 years old or older)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** (Year Eff. 1986) §§20-7-8920, 20-7-8925, 61-4-50(A), 61-4-580(1), 61-6-1500 & 61-6-4080(A)

Minimum Age (Years) Possession: **21** There are exemptions for home, religious ceremonies and employment. The employment exemption applies only to persons over 18 years old. §§20-7-320, 20-7-8920 & 20-7-8925

Minimum Age (Years) Consumption: **None**

[1]An offender may be allowed to participate in out-of-jail **public service work** while serving an incarceration sentence. and may be sentenced to **home detention** in lieu of incarceration with or without electronic monitoring. §§24-13-660 & 24-13-1530

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Jamison v. The Pantry, Inc.*, 392 S.E.2d 474 (S.C.App. 1990)[1], *Chritiansen v. Cambell*, 328 S.E.2d 351 (S.C.App. 1985), & *Steele v. Rogers*, 413 S.E.2d 329 (S.C.App. 1992)[2]
Dram Shop Actions-Social Hosts:	**No** *Garren v. Cummings & McCrady, Inc.*, 345 S.E.2d 508 (S.C.App. 1986)[3], & *Hill v. Honey's, Inc.*, 786 F.Supp. 549 (D.S.C. 1992)
Other:	A patron may bring a cause of action against a licensee for injures they have sustained after becoming intoxicated at the licensee's establishment. However, the licensee may assert the defenses of contributory negligence and assumption of risk at the trial. *Tobias v. Sports Club, Inc.*, 474 S.E.2d 450 (S.C.App. 1996)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	For alcoholic liquors[4&5]-(Misd) §61-6-1500 For nonintoxicating beverages-(Misd)[4] §§61-2-250 & 61-4-580(2)
Term of Imprisonment:	Alc. Beverages and Non-intoxicating Beverages: Not less than **3 mos** §§62-2-250 & 61-6-4210
Fine ($ Range):	Alc. Beverages and Non-intoxicating Beverages: Not less than **$100** §§62-2-250 & 61-6-4210 §61-13-870 See Footnote No. 4 on p. 3-432. See admin. fines under Admin. Actions below.

[1]In this case, the court held that a seller of alcoholic beverages to an under age person could be held liable for the injuries caused by such minor while intoxicated.

[2]A licensee can be held liable for the injuries caused by an intoxicated minor who consumed alcoholic beverages on the licensee's premises notwithstanding the fact that the licensee did not provide such beverages to the minor. The court held that by violating a State regulation that prohibits licensees from allowing minors to possess or consume alcoholic beverages on their premises, the licensee had committed a negligent act in that they violated a duty of care that they owed to the public to protect them against such intoxicated persons. *Norton v. Opening Break of Aiken, Inc.*, 462 S.E.2d 861 (S.C. 1995)

[3]However, a person, who encourages excessive consumption, may be held liable for the death of another who died as a result of such over consumption. *Ballou v. Sigma Nu General Fraternity*, 352 S.E.2d 488 (S.C.App. 1986)

[4]The term "non-intoxicating beverages" applies to beer (and other malt beverages) not in excess of 5% alcohol and wine not in excess of 21% alcohol. §61-4-10 The term "alcoholic liquors" applies to all other alcoholic beverages. §61-6-20(1)

[5]Nonprofit organizations, who are licensed to sell alcoholic liquors in minibottles, are prohibited from selling such beverages to intoxicated persons. §61-6-2220 The sanctions for a violation of this prohibition are as follows: 1st off-fine from $200 to $500 and/or license suspension for not more than 30 dys; 2nd off w/n 3 yrs-fine from $200 to $500 and/or license suspension for not more than 180 dys; and, 3rd off w/n 3 yrs-fine not less than $500 and permanent license revocation. §61-6-2600 However, under §61-6-4270, an admin. fine of from $100 to $1,500 may be paid in lieu of susp/rev.

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev**
Length of Term of License Withdrawal:	Alcoholic Beverages: 1st off-Rev for **1 yr** or pay a penalty of $200; sub. off-Rev for **2 yrs** or pay a penalty of $500 §61-6-4260 Note: Under §61-6-4270, an admin. fine of from $100 to $1,500 may be paid in lieu of susp/rev. Non-intoxicating Beverages: Susp/Rev under §61-4-580-Length of susp/rev is not specified or an admin. fine of from $25 to $1,000 may be paid in lieu of susp/rev. §61-4-250
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	Alcoholic Liquors[1]-(Misd); Non-intoxicating beverages[1]-(Misd)
Term of Imprisonment:	Alcoholic Beverages: **30 to 60 dys** §§61-6-1500, 61-6-2600, 61-6-4080 & 61-6-4700 Non-intoxicating Beverages: **30 to 60 dys** §61-4-50
Fine ($ Range):	Alcoholic Beverages: **$100 to $200** §§61-6-1500, 61-6-2600, 61-6-4080 & 61-6-4700 Non-intoxicating Beverages: **$100** §61-4-50 See Footnote No. 4 on p. 3-432. See Admin. fines under Admin. Actions below.
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev**
Length of Term License Withdrawal:	Alcoholic Beverages: 1st off-Rev for **1 yr** or pay a penalty of $200; sub. off-Rev for **2 yrs** or pay a penalty of $500 §61-6-4260 Note: Under §61-6-4270, an admin. fine of from $100 to $1,500 may be paid in lieu of susp/rev. Non-intoxicating Beverages: Susp/rev §61-4-580-Length of susp/rev is not specified or an admin. fine of $25 to $1,000 may be paid in lieu of the susp/rev. §61-4-250
Anti-Happy Hour Laws/Regulations:	**Yes Limited** §61-4-160 & 61-6-4550[2]

[1]See Footnote No. 4 on p. 3-434.

[2]The law prohibits the selling of alcoholic beverages (1) for free (there are exceptions), (2) for less than half the regular price or (3) on a "two for one" basis. Any alcoholic beverage (including beer) may be sold at less than the regular price between 4 and 8 p.m.

Other State Laws Related To Alcohol Use: (continued)

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):	**Yes** §61-6-4020
Anti-Consumption Law (Yes/No):	**Possible** Driver and passengers The law states that "[a]ny person who drinks alcoholic liquors in any public conveyance shall be deemed guilty of a misdemeanor." This provision does not apply either to railroad dining/club cars or to commercial aircraft. §61-6-4720

STATE:	**SOUTH DAKOTA**
General Reference:	South Dakota Codified Laws

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an alcoholic beverage §32-23-1(2)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1] §32-23-1(1) Persons Under 21 Years Old: ≥**0.02**[1] or **Any Evidence of Marijuana or a Controlled Drug or Substance** §32-23-21
Presumption (BAC):	≥**0.10**[1] §32-23-7 Note: Sec. 32-23-7 also applies this presumption to the veh homicide off.
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Substance**, (2) Any Controlled Drug, (3) Marijuana or (4) a Combination of These Substances and an Alcoholic Beverage §32-23-1(3) & (4)
Other:	For Commercial Motor Vehicle Operators, see p. 3-439.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §32-23-1.2
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §32-23-10
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §32-23-10
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** §§19-13-28.1 & 32-23-10.1[2] (Criminal Cases)
Other Information:	Chemical test required for persons who have been arrested for a third or subsequent DWI offense (alcohol or drug related) which constitutes a felony. "Force" may be used to obtain a blood sample. §32-23-10, *State v. Heinrich,* 449 N.W.2d 25 (S.D. 1989), *State v. Lanier,* 452 N.W.2d 144 (S.D. 1990), *State v. Sickler,* 488 N.W.2d 70 (S.D. 1992), & *State v. Jacobson,* 491 N.W.2d 455 (S.D. 1992)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §32-23-10
Urine:	**No** §32-23-10
Other:	"Other bodily substances" §32-23-10

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No** Note: An illegal per se charge may be reduced or dismissed only when written reasons for such have been filed with the court. §32-23-1.3
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes Limited** For 1st offenders where the BAC is ≥0.17, the court must require them to undergo an evaluation to determine if they are addicted to alcohol. §32-23-2.1 The courts have general authority to order discretionary pre-sentence investigation reports. §23A-27-5

[1]Based on percent by weight of alcohol in the blood. However, §32-3-7 provides that "[p]ercent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath."
[2]This statute was held constitutional in *South Dakota v. Neville,* 459 U.S. 553 (1981).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	Rev **1 yr**[1] A restricted hardship license is available. §§32-23-11 & 32-23-18
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	Important: See Persons Under 21 Years Old below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off Cl 1 Misd-Not more than **1 yr** (county jail); 2nd off (w/n 5 yrs) Cl 1 Misd-Not more than **1 yr** (county jail); 3rd off Cl 6 Felony (w/n 5 yrs)-Not more than **2 yrs**[2] (State penitentiary); 4th & sub. off (w/n 5 yrs) Cl 5 Felony-Not more than **5 yrs**[2] (State penitentiary) §§22-6-1, 22-6-2, 32-23-2, 32-23-3, 32-23-4 & 32-23-4.1 Vehicle Battery[3] (Cl 4 Felony)-Not more than **10 yrs** (State penitentiary) §§22-6-1 & 22-16-42
Mandatory Minimum Term:	**Limited**[3]
Fine:	
Amount ($ Range):	1st off-Not more than **$1,000**; 2nd off (w/n 5 yrs)-Not more than **$1,000**; 3rd off (w/n 5 yrs)-Not more than **$2,000**; 4th & sub. off (w/n 5 yrs)-Not more than **$5,000** Vehicle Battery[4]-Not more than **$10,000** §§22-6-1, 22-6-2 & 22-16-42
Mandatory Min. Fine ($):	**None**

[1]Under §32-23-11.1, a driver's license is not subject to revocation for refusal to submit to a chemical test under the implied consent law if either (1) the driver pleads guilty to a DWI offense, (2) the DWI charge is dismissed prior a hearing on the refusal and the person is not convicted of a reckless (§32-24-1) or careless (§32-24-8) driving offense or (3) a hearing is not requested, prior to the revocation being ordered.

[2]A person convicted of a Cl 5 or 6 Felony may be sentenced to serve not more than 1 yr in the county jail in lieu of the indicated incarceration period in the State penitentiary. §22-6-1.1

[3]Under §32-23-3, a 2nd offender, who was operating a motor vehicle without a license at the time of the offense, is subject to a mand 3 dys of imprisonment. Under §32-23-4, a 3rd offender, who was operating a motor vehicle without a license at the time of the offense, is subject to a mand 10 dys of imprisonment. Under §32-23-4.6, a 4th or subsequent offender, who was operating a motor vehicle without a license at the time of the offense, is subject to a mand 20 dys of imprisonment.

[4]Vehicle Battery: Causing serious bodily injury while driving a motor vehicle in a negligent manner while under the influence of an alcoholic beverage.

Persons Under 21 Years Old. A person under 21 years old, who operates a motor vehicle with a BAC ≥0.02 or with any evidence of a marijuana or any controlled drug or substance in their body, commits a Cl 2 Misd. The criminal sanctions for this offense are a jail term of not more than **30 dys** and/or a fine of not more than **$200**. In addition, they are subject to the following licensing action: 1st offense-susp for **6 mos**; and, 2nd or sub offense-susp for **1 yr**. Note: These licensing actions appear to be mandatory. §§2-6-2 & 32-23-21

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:	
Community Service:	**Yes** Community service may be condition of probation. §23A-27-18.3
Restitution (eg Victim's Fund)	**Yes** §§22-6-1, 22-6-2 & 23A-28-1 et seq. Restitution is to be paid by the defendants to the victims.
Other:	**None**
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	**None**
Post DWI Conviction Licensing Action:	Important: See Persons Under 21 Years Old on p. 3-438.
Type of Licensing Action (Susp/Rev):	1st off-**Rev**; 2nd and sub off-**Rev** (**Special Note:** Susp-If 15 points accumulated in 12 cons mos or 22 points in 24 cons mos; DWI=10 points §§32-12-49.1 & 32-12-49.2) Vehicle Battery (Cl 4 Felony)-**Rev** §§22-6-1 & 22-16-42
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-Not less than **30 dys to 1 yr**; 2nd off-Not less than **1 yr**; 3rd off-For such a period as determined "by the court but in no event less than **one [1] year** from the date sentence is imposed or one [1] year from the date of discharge from incarceration, whichever is later;"

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr nor more than 3 yrs (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC ≥0.04 (Standard: Percent by weight of alcohol in the blood. This standard is not further defined in the CMV law. However, see Footnote No. 1 on p. 3-437.) (2) are under the influence of alcohol or a controlled drug or substance or (3) refuse to submit to a chemical test for alcohol concentration. (Note: The "disqualification" provision, §32-12-104(5), only applies to a refusal to submit a chemical test for alcohol concentration; however, the CMV implied consent provision, §32-12-111, applies to the testing for both alcohol concentrations and drugs.) For either (1) a second violation or (2) a combination of two violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). For either (1) a subsequent violation or (2) a combination of three or more violations of any of the above listed items, the "disqualification" is permanent for life. Operating a CMV with a BAC "between 0.04 to 0.10 or more" is a Class 2 Misdemeanor; the sanctions for the offense are (1) a jail of not more then 30 days, (2) a fine of not more than $200 and (3) the possible payment of restitution. In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Note: A person, who has had their non-CMV driving privileges suspended or revoked, may obtain a court order granting them CMV driving privileges for employment purposes. §§22-6-2, 32-12-77(5), (9) & (20), 32-12-104, 32-12-105, 32-12-106.1, 32-12-110, 32-12-110.1, 32-12-111 and 32-12-117 **Special Note:** The State has also adopted by reference 49 CFR Parts 383 and 384. §32-12-124 These parts contain the following disqualification and out-of-service requirements for CMV operators. A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC ≥0.04 (Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath), (2) are under the influence of alcohol or a controlled drug or substance or (3) refuse to submit to a chemical test for alcohol concentration. For a second violation or a combination of two violations of any of the above listed items, the "disqualification" is for life. However, if they successfully complete a rehabilitation program, the disqualification may be reduced to a mandatory period of 10 yrs. For a third or subsequent violation or a combination of three or more violations of any of the above listed items, the "disqualification" is for life (mand). 49 CFR 383.5 & 383.51 **Comment:** In adopting 49 CFR Part 484, the State appears to have also adopted the out-of-service provisions of 49 CFR Part 392, since this later provision is cited in the former. Under these Federal Regulations, a person, who operates a CMV while having "any measured alcohol concentration", must be placed out-of-service for 24 hrs. 49 CFR 392.5

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.): (continued)	4th and sub. off-For such a period as determined "by the court but in no event less than **two [2] years** from the date sentence is imposed or two [2] years from the date of discharge from incarceration, whichever is later." (Under the point system susp 1 yr §32-12-47) §§32-12-52.1, 32-23-2, 32-23-3, 32-23-4 & 32-23-4.6 Vehicle Battery (Cl 4 Felony)-**2 yrs** subsequent to release from incarceration §22-16-42
Mandatory Minimum Term of Withdrawal:	1st off-**None**[1]; 2nd off-**1 yr** (not mandatory in all situations)[2]; 3rd off-**1 yr**; 4th and sub. off-**2 yrs** Note: Under the point system, there is no mandatory susp. period. §§32-23-2, 32-23-3 & 32-23-4 Vehicle Battery (Cl 4 Felony)-**None**
Other:	
Rehabilitation:	
Alcohol Education:	
Alcohol Treatment:	
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**None**
Terms Upon Which Vehicle Will Be Released:	
Other:	For **any** offense conviction, where a driver's license can be revoked or suspended, the registration of all vehicles owned by the driver shall also be suspended. §32-35-44
Miscellaneous Sanctions Not Included Elsewhere:	**None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Cl 3 Felony where death is caused by veh operation while under the influence of alcohol or drugs. §22-16-41
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **15 yrs** §22-6-1
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$15,000** §22-6-1
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §22-16-41
Length of Term of Licensing Withdrawal:	**2 yrs** Subsequent to release from incarceration §22-16-41

[1]A restricted hardship license is available for employment purposes and for attending court ordered counseling programs. §32-23-2
[2]Upon the successful completion of an alcohol treatment program, the court may grant a 2nd offender driving privileges for employment purposes and may place such conditions on this privileges as it sees fit. §32-23-3

Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum Length of License Withdrawal:	**None**
Other:	See DWI Vehicle Impoundment/Confiscation above.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote No. 1.
Sanction:	
Criminal:	
Imprisonment (Term):	For driving while revoked, Cl 1 Misd - Not more than **1 yr** for driving while suspended, Cl 2 Misd - Not more than **30 dys** See Footnote No. 2. §§22-6-2, 32-12-65 & 32-12-84
Mandatory Minimum Term of Imprisonment:	**Special Note:** A 2nd or subsequent DWI offender, who was operating a motor vehicle without a license at the time of the drunk driving offense, is subject to certain mandatory imprisonment sanctions. See Footnote No. 3 on p. 3-438.
Fine ($ Range):	For driving while revoked, Cl 1 Misd - Not more than **$1,000** For driving while suspended, Cl 2 Misd - Not more than **$200**
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp-if the conviction was based on driving while suspended; **Rev**-if the conviction was based on driving while revoked §32-12-66 Note: See DWI Vehicle Impoundment/Confiscation on p. 3-440.
Length of Term of License Withdrawal Action:	If the conviction was based on driving while suspended, an additional susp period equal to the original period of susp. If the conviction was based on driving while revoked the original rev period extended for **1 yr**. §32-12-66

[1]It is a Cl 1 misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 1 yr and/or a fine of not more than $1,000. In addition, for violating an out-of-service order, a person is subject to a civil penalty of from $1,000 to $2,500. In the case of driving while disqualified, an offender is subject to an additional CDL disqualification for 1 yr. However, for violating a CDL out-of-service order, the disqualification as follows: 1st violation-90 dys (mand); 2nd violation (w/n 10 yrs)-1 yr (mand); and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand). If the CMV operator was driving a CDL either containing hazardous materials or designed to carry more than 16 persons, the CDL disqualification periods are as follows: 1st violation-180 dys (mand); 2nd violation (w/n 10 yrs)-3 yrs (mand); and, 3rd or sub violation-5 yrs (mand). §§22-6-2, 32-12-66, 32-12-84, 32-12-119, 32-12-120, 32-12-121 & 32-12-122 **Special Note:** The State has adopted by reference 49 CFR Part 383. §32-12-124 This CFR part provides that if a person operates a CMV while under an out-of-service order, they are subject to the following disqualification periods: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. If the CMV operator was driving a CDL either containing hazardous materials or designed to carry more than 15 persons, the CDL disqualification periods are as follows: 1st violation-180 dys (mand) to 2 yrs; and, sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. 49 CFR 383.51

[2]Under §22-6-2, for either a Class 1 or 2 Misd conviction, the court may order the defendant to pay restitution to a victim of the offense pursuant to §23A-28-1 et seq.

[3]Mandatory licensing withdrawal actions apply only to the offense of driving while suspended. There is no additional mandatory licensing action (i.e., 1 yr. additional revocation period) for driving while revoked.

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Mandatory Term of License Withdrawal Action:	If the conviction was based on driving while suspended, an additional susp period equal to the original period of susp.[3] §32-12-66
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §34-25-22.1
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**Yes**
Pedestrian:	**Yes**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1988) §§35-4-78, 35-9-1 & 35-9-2
Minimum Age (Years) Possession:	**21**[1] §§35-4-78, 35-9-1 & 35-9-2
Minimum Age (Years) Consumption:	**21**[1] §§35-4-78, 35-9-1 & 35-9-2

[1]There is an exemption for either the possession or the consumption of alcoholic beverages by persons under 21 yrs of age for religious ceremonies.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**[1] Liability is prohibited via statutory law. §§35-4-78 & 35-11-1
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	Case law providing for dram shop liability has been abrogated by statutory law.[1]
Dram Shop Actions-Social Hosts:	**No** Liability is prohibited via statutory law. §35-11-2
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Cl 1 Misd** §§22-6-2 & 35-4-78
Term of Imprisonment:	Not more than **1 yr** (county jail)
Fine ($ Range):	Not more than **$1,000**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev/Susp** §35-2-10
Length of Term of License Withdrawal:	**Rev-1 yr** or **Susp**-not more than **60 dys**[2] §§35-2-20 & 35-2-21

[1]**Historical Note:** The following is a brief chronology of recent dram shop liability events in South Dakota. In 1982, the South Dakota Supreme Court established dram shop liability via common law negligence. *Waltz v. City of Hudson,* 327 N.W.2d 12 (S.D. 1982) In 1985, in a case concerning the death of an intoxicated patron, the court reaffirmed its position in *Waltz. Selchert v. Lien,* 371 N.W.2d 791 (S.D. 1985) (Note: In *Selchert*, the court held that a wife had a cause of action in negligence against a licensee for the death of her intoxicated husband. The husband became inebriated at the licensee's establishment. While in this condition, he drove himself home and parked his vehicle in the garage and closed the garage's door via remote control. However, due to his intoxicated state, he was unable to exit the vehicle and did not turn off the vehicle's engine. As a consequence, he fell asleep and died of carbon-monoxide poisoning.) In response, the State legislature passed legislation in 1985 abrogating these decisions. §§35-4-78 & 35-11-1 However, in 1988, the State supreme court held that this legislation violated Art. VI, §20 of the State's constitution which provides that persons have a right to bring a cause of action either for personal injuries or for property damage. *Baatz v. Arrow Bar,* 426 N.W.2d 298 (S.D. 1988) (Note: On remand, the trial court granted summary judgement to the individual defendants (not the corporation). This decision was affirmed by the State supreme court. *Baatz v. Arrow Bar,* 452 N.W.2d 138 (S.D. 1990)) In 1997, apparently due to a change in the court's composition, the State supreme court reversed its decision in the *Baatz* (1988) case and reinstated the statutory law that precludes dram shop liability actions. *Wildeboer v. S.D. Junior Chamber of Comm.,* 561 N.W.2d 666 (S.D. 1997) **Comment:** A majority of the court's justices took this action with little discussion and without specifically overruling the *Baatz* decision. See the dissenting opinion in the *Wildeboer* case.

[2]In lieu of either a revocation or a suspension, the licensee may be allowed to pay a "monetary offer in compromise." This "compromise" cannot exceed $75,000. §35-2-21

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	See the Special Note below.
Type of Criminal Action:	**Cl 1 Misd** Licensees who sell alcoholic beverages to persons under 21 years old §§22-6-2 & 35-4-78[1]
Term of Imprisonment:	Not more than **1 yr** (county jail)
Fine ($ Range):	Not more than **$1,000**
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev/Susp** §35-2-10
Length of Term License Withdrawal:	**Rev-1 yr** or **Susp**-not more than **60 dys** §§35-2-20 & 35-2-21 See Footnote No. 2 on p. 3-443.
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §35-1-9.1
Anti-Consumption Law (Yes/No):	**No**

[1]Under §35-9-1, it is Cl 1 misd for a person to sell or give alcoholic beverages to a person under 18 years old except in situations where alcoholic beverages are sold or served to a minor in the "immediate presence" of a parent or guardian. Under §35-9-1.1, it is a Cl. 2 misd. for a person to sell or serve alcoholic beverages to a person over 18 but under 21 years old unless it is done in the "immediate presence" of a parent or guardian. It is also a Cl. 2 misd for an "on-sale" licensee to allow a person, who is under 19 years old, to consume alcoholic beverages on the licensee's premises. The sanctions for a Cl 2 misd are imprisonment of not more than 30 dys (county jail) and/or a fine of not more than $200.

Special Note: An incorporated licensee can be held criminally liable for the actions of its employees who sell alcoholic beverages to minors. *State v. Hy Vee Food Stores, Inc.*, 533 N.W.2d 147 (S.D. 1995)

STATE:	**TENNESSEE**
General Reference:	Tennessee Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	I. Under the influence of any intoxicant[1] (e.g., alcohol) §55-10-401(a)(1) II. Adult Driving While Impaired (Persons ≥21 Years Old) §55-10-418(a)[1]
Illegal Per Se Law (BAC/BrAC):	**≥0.10**[2&3] §55-10-401(a)(2) Persons ≥16 but <21 Years Old-**>0.02**[1&3] (Underage Impaired Driving Offense) §55-10-415(a)(1)(A)
Presumption (BAC/BrAC):	I. 1st off-**≥0.10**[3]; sub off-**≥0.08**[3] §55-10-408(a) & (b) II. Adult Driving While Impaired (Persons ≥21 Years Old)-**≥0.08 but <0.10**[3] §55-10-418(c)
Types of Drugs/Drugs and Alcohol:	I. Under the influence of (1) **Any Intoxicant**, (2) Marijuana, (3) Narcotic Drug or (4) Drugs Producing Stimulating Effects on the Central Nervous System[4] §55-10-401(a)(1) II. Adult Driving While Impaired (Persons ≥21 Years Old) §55-10-418(a)[1]
Other:	For Commercial Motor Vehicle Operators, see p. 3-449.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §55-10-406(a)(3)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §55-10-406(a)(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *State v. Smith,* 681 S.W.2d 569 (Tenn.Cr.App. 1984), & *State v. Frasier,* 914 S.W.2d 467 (Tenn. 1996)
Other Information:	**None**

[1]**Persons ≥16 but <21 Years Old.** Sec. 55-10-415 establishes the offense of "underage driving while impaired" (which is a lessor included offense of regular DWI) for persons age 16 or over but under age 21. This offense consists of (1) driving with an alcohol concentration >0.02 (Based on percent of alcohol in the blood. See Footnote No. 3 below.), (2) driving while under the influence of alcohol, (3) driving while under the influence of any intoxicant, marijuana, narcotic drug or stimulating drug under §55-10-401(b) or (4) driving while under the combined influence of alcohol and any of the substances or drugs listed in (3). For persons >18 but <21, this offense is a Class A misd; for persons >16 but <18, this offense is a "delinquent act". §55-10-415(d) & (e) Note: An appellate court has held that §55-10-415 does not violate a person's Federal or State constitutional rights to equal protection of the laws. *State v. Crain,* 972 S.W.2d 13 (Tenn.Cr.App. 1998)

Persons ≥21 Years Old. A person ≥21 yrs old commits an "adult driving while impaired" offense if they operate a motor vehicle while their ability to safely drive is impaired "as the proximate result of the consumption or ingestion of alcohol, drugs, any other intoxicant or any combination thereof." §55-10-418(a)

[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.

[3]Standard: Percent or percent by weight of alcohol in the blood. §§55-10-401(a)(2) and 55-10-408(a) & (b) The Tennessee Supreme Court has noted that blood alcohol concentration is expressed as "grams of alcohol per 100 cubic centimeters of blood or 210 liters of breath." *State v. Sensing,* 843 S.W.2d 412 (Tenn. 1993); see Footnote No. 2, 843 S.W.2d at 415. See also *State v. McKinney,* 605 S.W.2d 842 (Tenn.Cr.App. 1980) (Permission to appeal was denied by the Tennessee Supreme Court.).

[4]Drugs "producing stimulating effects" include "[t]he salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenolethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit of internal use." §55-10-401(b)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §55-10-405(5)
Urine:	**Yes** §55-10-405(5)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**Yes** §55-10-403(b)(1)[1]
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**Susp-12 mos** A refusal where there has been an injury related accident-**Susp-2 yrs** A refusal where there has been a death related accident-**Susp-5 yrs** §55-10-406(a)(3) A restricted license may be issued. §55-10-406(d)
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Adult Driving While Impaired Offense on p. 3-447.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off (Cl A misd)-**48 hrs to 11 mos 29 dys**; 2nd off (w/n 10 yrs) (Cl A misd)-**45 dys to 11 mos 29 dys**[2]; 3rd off (w/n 10 yrs) (Cl A misd)-**120 dys to 11 mos 29 dys**; 4th and sub off (w/n10 yrs) (Cl E felony)-**1 to 6 yrs** §55-10-403 Vehicle Assault[3] (Cl D felony)-**2 to 12 yrs** §§39-13-106 and 40-35-111(b)(4) & (5)

[1]Pre-trial diversion is prohibited until the minmum sentence is served. §55-10-403(b)(1) & *State v. Washington,* 866 S.W.2d 950 (Tenn. 1993)

[2]I. The court may order a 2nd offender to serve not more than 28 days of the jail sentence in an inpatient alcohol or drug treatment program. The remainder of the confinement period must be spent in jail. §55-10-403(a)(4) II. A 2nd offender, where the drunk driving offense involved neither a death nor an injury, is also eligible to participate in a work release program. To participate in this program, an offender must agree (1) to be screened daily for alcohol or drug use, (2) not to operate a motor vehicle, (3) to remain incarcerated when not at work and (4), if they are financially able, to pay the cost of their incarceration or treatment. §41-2-128(c)

[3]Recklessly causing a serious bodily injury to another person where such injury was the proximate result of operating a vehicle while in violation of §55-10-401.

Sanctions Following a Conviction for a DWI Offense:
(continued)

	Persons ≥16 but <21 Years Old (Underage Impaired Driving)-**None**
Mandatory Minimum Term:	1st off-**48 hrs**[1] (If BAC/BrAc ≥0.02-**7 con dys**); 2nd off (w/n 10 yrs)-**45 dys**[1] See Footnote No. 2 on p. 3-446.; 3rd off (w/n 10 yrs)-**120 dys**[1]; 4th and sub off (w/n 10 yrs)-**150 con dys** Vehicle Assault-**None**
Fine:	
Amount ($ Range):	1st off-**$350 to $1,500**[2]; 2nd off (w/n 10 yrs)-**$600 to $3,500**[2]; 3rd off (w/n 10 yrs)-**$1,100 to $10,000**[2]; 4th and sub off (w/n 10 yrs)-**$3,000 to $15,000**[2] §55-10-403 Vehicle Assault-Not more than **$5,000**[1] §40-35-111(b)(4) **Persons ≥16 but <21 Years Old** (Impaired Driving)-**$250** §55-10-415(d)
Mandatory Min. Fine ($):	1st off-**$350**; 2nd off (w/n 10 yrs)-**$600**; 3rd and subsequent off (w/n 10 yrs)-**$1,100** Note: These fines are mandatory unless a judge determines that a defendant is indigent. §55-10-403(b)(2) Vehicle Assault-**None** Persons ≥16 but <21 Years Old (Underage Impaired Driving)-**$250 Comment:** The law is not clear on whether this fine is mandatory.
	Special Note: For sanction enhancement purposes for subsequent drunk driving offenses, a prior offense includes a previous vehicle homicide or assault offense related to drunk driving. §55-10-403
Other Penalties:	
Community Service:	I. In metropolitan areas with a population of over 100,000, the court is authorized to sentence a 1st offender to perform 200 hrs of community service in lieu of the 48 hrs minimum jail term. §55-10-403[3] II. After serving the minimum sentence, a judge may order the defendant to remove litter from various public areas or work in a recycling center or "other appropriate location" for any period

[1]DWI offenders, who are allowed to serve imprisonment sentences on non-consecutive days, must, nevertheless, spend the first 48 hrs of such a sentence in a consecutive manner. §40-35-216

[2]**Head Injuries Costs.** The State has established a three year pilot program to financially assist persons in need who have suffered "head injuries". To fund this program, every person who is convicted of a DWI offense must pay an assessment of $5. This assessment is paid into the Impaired Drivers Trust Fund. The trust fund cannot expend more than $98,000 annually on this project. §§9-4-206 & 55-10-403(i)

[3]**Comment:** Given the holding by the Tennessee Supreme Court in *State v. Tester*, 879 S.W.2d 823 (Tenn. 1994), there is a question as to whether this provision is constitutional. In this case, the court held that provision of the law, §41-2-128(c), that limited drunk driving work release programs for 2nd offenders to counties with a population >700,000, violated Federal and State constitutional provisions concerning equal protection. This law was amended by the Tennessee Legislature in 1995 to eliminate this constitutional impediment. Public Chapter No. 187 of 1995

Adult Driving While Impaired Offense. 1st offense (Cl B Misd)-The **only** sanction is a fine of **$500**. §55-10-418(d)(1) However, a person, who is convicted of this offense again, is subject to the same sanctions as a person who is convicted of "driving while under the influence of an intoxicant" (§55-10-401(a)(1) offense) for either a 2nd, 3rd, 4th or subsequent offense. §55-10-418(d)(3) A person is considered to be a 1st offender **only if** they have not had a previous drunk driving offense of any kind. If they have had one or more prior drunk driving offense convictions and are convicted of this offense for the first time, they are sentenced as if they were a 2nd or subsequent "driving while under the influence of an intoxicant" offender. §55-10-418(e)

Sanctions Following a Conviction for a DWI Offense:
(continued)

II. (continued) of time in lieu of or in additional to other penalties. The community service work may be accomplished during non-working hrs. §55-10-104(a)(1)
III. **Persons ≥16 but <21 Years Old** (Underage Impaired Driving). The court may impose "public work" service. §55-10-415(d)

Restitution
(eg Victim's Fund):

Yes (1) A defendant may be "sentenced" to pay compensation directly to a victim. §§39-11-118, 40-35-104 & 40-35-304 (2) A victim's compensation fund §§29-13 101 et seq. & 40-24-107(a)(3) Note: A "willing" passenger, who is injured while riding with a DWI offender, is not entitled to compensation. §40-24-107(e) (3) Also, the defendant shall be ordered to pay restitution as a condition of probation if defendant can afford it. Probation may commence only after minimum jail sentence has been serve. §55-10-403(c)(3)

Other:

BAC Test Fee. DWI offenders in certain counties or counties with a metropolitan form of government are required to pay a BAC test fee. §55-10-403(h)
Ignition Interlock. In addition to any other penalties provided for a DWI offense conviction, a defendant may be required to operate vehicles equipped with "ignition interlock" devices. Note: The law provides that the use of such devices could be required for up to one (1) year after a person's license is no longer suspended/revoked. §55-10-412(d) For a 2nd or subsequent DWI law offender, the law creates an inference that the court should order the use of an ignition interlock device as a means of protecting the public. The court may require the use of these devices during all or part of susp/restriction period or after such susp/restriction period has expired. §55-10-12(i)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

None

Other:

Under §55-50-502(a), the licensing agency can suspended a person's license if they have "committed" an offense which requires mandatory license revocation. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:

See the Special Note on p. 3-449.
See Adult Driving While Impaired Offense on p. 3-447.

Type of Licensing Action
(Susp/Rev):

Prohibition/Rev[1&2] §§55-10-403, 55-7-501(a)(2) & 55-7-502
Persons ≥16 but <21 Years Old (Underage Impaired Driving). Susp §55-10-415(d)
Vehicle Assault-**Rev** §55-50-501(a)(3)

[1]The law uses various terms to describe the licensing action that is to be taken against DWI offenders. Under §55-10-403, the courts "prohibit" the offender from driving. However, §55-7-501 provides that the licensing agency shall "revoke" the offender's license.
[2]Under §§55-7-501(a)(2) and 55-7-502(e)(3) & (4), the licensing agency can also take the following action against a DWI offender. 1st off-rev for 6 mos; sub. off-rev for 1 yr.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.):	The following action is by the courts: 1st off-**1 yr**[1]; 2nd off (w/n 10 yrs)-**2 yrs**[2]; 3rd off (w/n 10 yrs)-**3 to 10 yrs**[2]; 4th and subsequent off (w/n 10 yrs)-**5 yrs** §§55-10-403 & 55-50-501 See Footnote No. 2 on p. 3-448. **Persons ≥16 but <21 Years Old** (Underage Impaired Driving)-**1 yr** Vehicle Assault-**1 yr** §55-50-502(e)(3)
Mandatory Minimum Term of Withdrawal:	1st off-**1 yr**[1&3] 2nd off-**2 yrs**[2]; 3rd off-**3 yrs**[2]; 4th and subsequent off-**5 yrs** §55-10-403(d)(2) & (3) **Persons ≥16 but <21 Years Old** (Underage Impaired Driving)-**1 yr Comment:** The law is not clear on whether this licensing action is mandatory. Vehicle Assault-**1 yr** §55-50-502(e)(3) **Special Note:** Under separate statutory authority, the court can impose the following additional licensing sanctions for DWI offense convictions. 1st off-Prohibit driving for up to and including 6 mos; 2nd off-Prohibit driving for up to and including 3 yrs; 3rd and sub. off-Prohibit driving for up to and including 10 yrs. §55-10-412(a)
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** See Alcohol Treatment below.
Alcohol Treatment:	**Yes** Participation in an alcohol safety DWI prog. is required as part of probation Note: Probation can begin only after serving the min. imprisonment term. §55-10-403(c)(1) For 2nd and subsequent convictions, a condition of probation is participation in a rehab. prog. treatment facility. §55-10-403(c)(2) Under §55-50-502(c), the licensing agency, prior to reissuing a license to a person following a 2nd or subsequent DWI conviction, must require them to complete an alcohol or drug abuse education or treatment program. See Footnote No. 2 on p. 3-446.

[1]Under §55-50-502(e)(4), if this is the defendant's first license revocation, it appears that they are able to apply for a new license after only 6 months.
[2]See Alcohol Treatment.
[3]Hardship license for employment available after a 1st conviction only if no one was killed or seriously injured as a result of the DWI off. §55-10-403(d)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's CDL is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC ≥0.04 (Standard: Percent by alcohol in the blood. See Footnote No. 3 on p. 3-445.) or (2) are under the influence of alcohol (with a BAC ≥0.04) or a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the suspension is for life (10 yrs mand). A commercial motor vehicle operator, who drives a CMV with a BAC ≥0.04 violates the regular DWI laws (§55-10-401). §§55-50-102(12), 55-50-405(a) & 55-50-408 The disqualification provisions also apply to non-CDL drivers who are operating commercial vehicles with a gross vehicle weight ≥10,001 lbs through 26,000 lbs. §55-50-405(f)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	**Forfeiture (Appears to be Mandatory)**[1] The vehicle used in the offense is subject to forfeiture for a 2nd or sub. DWI offense conviction.[2] §55-10-403(k)(1)
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**Child Endangerment.** I. A person commits a Cl A misd if they commit a DWI offense and at the time of the offense they were "accompanied" by a child under 13 years old: Jail-not more than 11 mos 29 dys (30 dys mand); fine-not more than $2,500 ($1,000 mand). II. If the child was injured at the time of the offense, the person commits a Cl D felony: Jail-2 to 12 yrs; fine-not more then $5,000. III. If the child was killed at the time of the offense, the person commits a Cl C felony: Jail-3 to 15 yrs; fine-not more than $10,000. **Comment:** The mand. jail and fine sanctions for the misd offense may also apply to the felony offenses. However, the law is not clear on this point. §§40-35-111(b)(3) & (4), 40-35-111(e)(1) and 55-10-414

Other Criminal Actions Related to DWI:

Homicide by Vehicle: State Has Such a Law:	**Yes** I. Cl C Felony §39-13-213(a) II. If DWI related-Cl B Felony §39-13-213(a) & (b) III. Aggravated Vehicle Homicide[3]-Cl A Felony §39-13-218
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	I. Cl C Felony-**3 to 15 yrs** §40-35-111(b)(3) II. Cl B Felony-**8 to 30 yrs** §40-35-111(b)(2) III. Cl A Felony-**15 to 60 yrs** §40-35-111(b)(1)
Mandatory Minimum Term:	**None**
Fine ($ Range):	I. Cl C Felony-Not more than **$10,000** §40-35-111(b)(3) II. Cl B Felony-Not more than **$25,000** §40-35-111(b)(2) III. Cl A Felony-Not more than **$50,000** §40-35-111(b)(1)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev/Prohibition** §§39-13-213 & 55-50-501(1)

[1]**Special Note:** Because of a lack of statutory authority, a court ordered DWI probation condition that provided for the temporary forfeiture of a defendant's vehicle was voided by the Tennessee Supreme Court. *State v. Bouldin,* 717 S.W.2d 584 (Tenn. 1986)
[2]One prior off must occur either on or after 1/1/97 and a second must occur w/n 5 yrs after the first. §55-10-403(k)(2)
[3]Aggravated Vehicle Homicide is vehicle homicide where the defendant had either (1) two or more prior DWI/vehicle assault convictions (or any combination of them), (2) a prior vehicle homicide conviction or (3), at the time of the vehicle homicide offense, a BAC ≥0.20 and a previous DWI or vehicle assault conviction. §39-13-218

Other Criminal Actions Related to DWI: (continued)

Length of Term of Licensing Withdrawal:	There are two (2) separate diving privilege withdrawal schemes which could apply to all vehicle homicide offenses. (1) The licensing agency can revoke the offender's license for period that period of time that **equals the term of the sentenced received**[1]. §55-50-501(a)(1) (2) The court can prohibit the offender from operating a motor vehicle from **3 to 10 yrs**. §39-13-213
Mandatory Action--Minimum Length of License Withdrawal:	**3 yrs** §39-13-213
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote Nos. 2, 3 & 4.
Sanction:	
Criminal:	
Imprisonment (Term):	Cl B misd-**2 dys to 6 mos** Cl A misd (if driving while rev where the original licensing action was a 2nd or sub DWI off)-**45 dys to 1 yr** §55-50-504(a)
Mandatory Minimum Term of Imprisonment:	Cl B misd-**2 dys** Cl A misd (if driving while rev where the original licensing action was a 2nd or sub DWI off)-**45 dys** §50-55-504(f)
Fine ($ Range):	Cl B misd-Not more than **$1,000** Cl A misd (if driving while rev where the original licensing action was a 2nd or sub DWI off)-Not more than **$3,000** §55-50-504(a)
Mandatory Minimum Fine:	**None**

[1]If paroled, the defendant may have their license reissued upon satisfactory completion of a licensing exam and on petition of the defendant's parole officer. §55-50-501(a)(1)

[2]I. Under §55-50-405(a), a person is prohibited from operating a CMV during a CDL disqualification. However, the law is unclear as to whether there are specific sanctions for this offense. Note: The sanctions for operating a CMV without a valid CDL are (1) imprisonment for 30 dys to 90 dys and/or a fine of $250 to $1,000 for a 1st offense and (2) imprisonment for 90 dys to 1 yr and/or a fine of $1,000 to $2,500 for a subsequent offense. §§55-50-404(a) & 55-50-405(e) II. Tennessee law does not provide for CDL out-of-service orders for operating a CMV with any amount of alcohol in the body. Nevertheless, it does provide for licensing sanctions for violating such an order (e.g., under Federal law). A person, who is convicted of violating a CDL out-of-service order, is subject to the following CDL suspension periods: 1st off-90 dys (mand); 2nd off (w/n 10 yrs)-1 yr (mand); and, 3rd or sub off (w/n 10 yrs)-3 yrs (mand). However, the following disqualification periods apply if the out-of-service order conviction was the result of driving a CMV which was either transporting hazardous materials or 15 or more persons: 1st off-180 dys (mand); and, 2nd or sub off (w/n 10 yrs)-3 yrs (mand). §55-50-405(7) & (8)

[3]It is a Cl C misd to operate a motor vehicle in violation of a court ordered prohibition against driving following a conviction for a drunk driving offense. The sanctions for this misd are an imprisonment term of not more than 30 dys and/or a fine of not more than $50. §55-10-412(b)

[4]**Vehicle Forfeiture.** The vehicle used in the commission of the offense is subject to forfeiture if the original suspension or revocation was for a drunk driving offense. §55-50-504(h)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Rev**-If the conviction was based on driving while revoked. §55-50-504(b)
Length of Term of License Withdrawal Action:	The original rev period extended **1 yr**. §55-50-504(b)
Mandatory Term of License Withdrawal Action:	The original rev period extended **1 yr**. §55-50-504(b)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §§55-10-601 to 55-10-617
Grounds for Being Declared an Habitual Offender:	I. Three (3) or more serious traffic offense convictions w/n 3 II. Three (3) or more serious traffic offense convictions w/n 5 yrs. III. Five (5) or more serious traffic offense convictions w/n 10 yrs. Examples of serious traffic offenses are as follows: (1) Voluntary or involuntary motor vehicle homicide; (2) DWI; (3) failure to stop at the scene of an accident; (4) overtaking a school bus; (5) driving on a revoked, cancelled or suspended license; or, (6) reckless driving.
Term of License Rev While Under Habitual Offender Status:	**3 yrs** §55-10-615
Type of Criminal Off if Convicted on Charges of Driving While on Habitual Offender Status	**Cl E felony** §55-10-616
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**1 to 6 yrs** §§40-35-111(b)(5) & 55-10-616
Mandatory Minimum Term of Imprisonment:	**1 yr**[1] §55-10-616
Fine ($ Range):	Not more than **$3,000** §§40-35-111(b)(5) & 55-10-616
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Discretionary** §38-7-109
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Discretionary**
Vehicle Passengers:	**Discretionary**
Pedestrian:	**Discretionary**

[1]One (1) year of imprisonment is mandatory unless the habitual offender operated a motor vehicle in order to save life or limb. §55-10-616

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff. 1984) §§1-3-113, 57-3-406(d), §57-4-203(b)(1) & (2)(A) and 57-5-301(a) & (d)(1)
Minimum Age (Years) Possession:	**21** There is an employment exemption §§1-3-113, 57-3-412(a)(3), 57-4-203(b)(2)(A) & (b)(3) and 57-5-301(e)(1)
Minimum Age (Years) Consumption:	**21** §1-3-113
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §57-10-101 et seq.[1&2] **Comment:** This statute may have abrogated, at least in part, the case law noted below.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Mitchell v. Ketner,* 54 Tenn. App. 656, 393 S.W.2d 755 (CA 1964)
Dram Shop Actions-Social Hosts:	**No** §§57-10-101 & 57-10-102
Other: **None**	
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	See the Special Note on p. 3-454.
Type of Criminal Action:	**Cl A Misd** §§40-35-111, 57-3-204, 57-3-406(c), 57-3-412(a)(1), 57-4-203(c) & 57-4-203(j)(1)
Term of Imprisonment:	I. Pkg sales of alc. bev (Except beer containing less than 5% alc.)-**11 mos 29 dys** II. On premises consumption of all alc. bev-**11 mos 29 dys**
Fine ($ Range):	I. Pkg sales of alc. bev (Except beer containing less than 5% alc.)-**$2,500** II. On premises consumption of all alc. bev-**$2,500**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §§40-35-111, 57-3-104(c)(1)(A), 57-3-214, 57-3-215(a), 57-4-202(a) & 57-4-203(j)(3)
Length of Term of License Withdrawal:	I. Pkg sales of alc. bev (Except beer containing less than 5% alc.)-Susp length not specified; Rev.-**1 yr** II. On premises consumption of all alc. bev-1st off-Length of susp/rev is not specified; 2nd off-**Permanent rev**

[1]Before a commercial server can be held liable for the actions of their intoxicated patrons, the following must be proven. The court must determine "beyond a reasonable doubt" that the sale of alcoholic beverages was the proximate cause of the injury sustained and that such beverages were sold either to a person under 21 years old or to an obviously intoxicated person whose consumption thereof was the direct cause of the injury.

[2]Under the dram shop law, a licensee is not liable for the actions committed by intoxicated minors who did not directly purchase alcoholic beverages from the licensee. *Worley v. Weigels, Inc.,* 919 S.W.2d 589 (Tenn. 1996) Also, a licensee, who "gives" but does not "sell" alcoholic beverages to a minor, is not liable under the dram shop law for the injuries caused by a minor as a result of consuming such beverages. *LaRue v. 1817 Lake Inc.,* 966 S.W.2d 423 (Tenn.App. 1997)

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	See the Special Note below.
Type of Criminal Action:	**Cl A Misd** §§40-35-111, 57-3-406(d), 57-3-412(a)(1), 57-4-101(a), 57-4-203(b)(1), (j)(1) & (4), 57-5-101, 57-5-301(a) and 57-6-102(2)
Term of Imprisonment:	I. Pkg sales of alc. bev (Except beer containing less than 5% alc.)-**11 mos 29 dys** II. On premises consumption of all alc. bev-**11 mos 29 dys**
Fine ($ Range):	I. Pkg sales of alc. bev (Except beer containing less than 5% alc.)-**$2,500** II. On premises consumption of all alc. bev-**$2,500**
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Sups/Rev** §§57-3-104(c)(1)(A), 57-3-214, 57-3-215(a), 57-4-202(a), 57-4-203(j)(4), 57-5-109(c) & (k) and 57-5-303(c)
Length of Term License Withdrawal:	I. Pkg sales of alc. bev (Except beer containing less than 5% alc.)-Susp length not specified; Rev.-**1 yr** II. On premises consumption of all alc. bev-1st off-Length of susp/rev is not specified; 2nd off-**Permanent rev**
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** Drivers only[1] §55-10-416
Anti-Consumption Law (Yes/No):	**Yes** Drivers only[1] §55-10-416

[1]However, a municipality may enact an open container/anti-consumption ordinance that applies to passengers. §55-10-416(c)

Special Note: There are separate provisions of the code (1) that relate to sale of beer and other alcoholic beverages with a content of not more than 5% alcohol and (2) that apply to both package and by the drink sales of such beverages. These provisions do not provide sanctions for selling these types alcoholic beverages to an intoxicated person. However, they do have the following sanctions for selling such beverages to minors; in some respects, these sanctions "overlap" those given above. For a 1st off (Cl A misd), there is a jail term for not more than 11 mos 29 dys and/or a fine of not more than $2,500. In addition, the license to sell such beverages may be either be either suspended or revoked. A revocation is for 1 year. However, as an alternative to either a suspension or revocation, a licensee may pay a civil penalty of $1,500. If the sale is to a person over 18 but under 21 who (1) presents some type of identification of their age or (2) otherwise appears to be over the legal drinking age, the license cannot be revoked but it may be suspended for not more than ten (10) days. For a 2nd off (Cl E felony), there is an imprisonment term of from 1 to 6 yrs and/or a fine of not more than $3,000. In addition, the license to sell such beverages is permanently revoked. §§40-35-111, 57-5-105, 7-5-108, 57-5-301(a)(1) & 57-5-303

STATE:	**TEXAS**
General Reference:	Most citations are to Vernon's Texas Transportation Code, Penal Code, Alcoholic Beverage Code or Code of Criminal Procedure.

Basis for a DWI Charge:

Standard DWI Offense:	Intoxicated while driving[1] Penal Code §§49.01(2)(A) & 49.04
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1] Penal Code §§49.01(2)(B) & 49.04 Persons Under 21 Years Old- **>0.00**[2] Alcoholic Beverage Code §§106.01 & 106.041(a)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	**Intoxicated** while driving[1] Penal Code §§49.01(2)(A) & 49.04
Other:	I. For Commercial Motor Vehicle Operators, see p. 3-461. II. It is illegal for a person to operate a motor vehicle if they are "addicted to the use of alcohol or a controlled substance." Tran. Code §521.312

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** Tran. Code §724.011(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** Tran. Code §724.011(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) Tran. Code §724.061 & *Jamail v. State,* 787 S.W.2d 380 (Tex.Cr.App. 1990)[3]
Other Information:	A law enforcement "shall require" a driver, who has been arrested for "driving while intoxicated" and has refused to submit to test voluntarily, to submit to a blood or breath test if the driver was involved in an accident that either resulted in a death or will likely result in one. Tran. Code §724.012

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** Tran. Code §724.011(a)
Urine:	**No**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**

[1]The term "intoxicated" means either (1) not having normal use of mental or physical facilities by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug or a combination or two or more of these substances into the body or (2) having an "alcohol concentration" ≥0.10. *Sullivan v. State,* 807 S.W.2d 342 (Tex.App. — Houston [14th Dist.] 1991) The term "alcohol concentration" is defined as grams of alc. per 100 milliliters of blood, grams or alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. Penal Code §49.01(1)

[2]It is illegal for a person <21 yrs old to operate a motor vehicle while having any detectable amount of alcohol in their system. Alcoholic Beverage Code §§106.01 & 106.041(a)

[3]Evidence of a refusal cannot be admitted if the driver was not warned of the consequences of such refusal. *Janak v. State,* 826 S.W.2d 803 (Tex.App. — Texarkana 1992)

Adjudication of DWI Charges: (continued)

Anti-Plea Bargaining Statute (Yes/No):	**No**[1]
Pre-Sentencing Investigation Law (PSI)(Yes/No):	**Yes (Limited)** Before the court can assign a drunk driving offender to community supervision (probation), the offender is required to submit to alcohol and drug evaluation. Code of Criminal Procedure Article 42.12, §13 See Treatment Alternative to Incarceration on p. 3-459. Note: There is a general pre-sentence investigation law which has be codified as §9 of Art. 42.12 of the Code of Criminal Procedure.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	I. Refusal-Persons ≥21 yrs old-**Susp 90 dys**/Persons <21 yrs old-**Susp 120 dys** An occupational license may be issued at any time based on essential need. II. Refusal where there has been either a prior refusal or a previous admin. per se action w/n 5 yrs-Persons ≥21 yrs old-**Susp 180 dys**/Persons <21 yrs old-**Susp 240 dys** III. Refusal (any person) where there has been either a previous intoxicated/under the influence of alcohol/controlled substance offense w/n 5 yrs-**1 yr** IV. **90 dys mand susp**[2] for any person if they have had either a prior refusal or a previous admin. per se licensing action w/n 5 yrs V. **180 dys mand susp**[2] for any person if they have had (1) a previous intoxicated/under the influence of alcohol/controlled substance offense, (2) a prior driving while intoxicated assault offense or (3) a prior driving while intoxicated manslaughter offense w/n 5 yrs[2] Tran. Code §§521.251, 724.035 & 724.045
Other:	If a driver is acquitted of a DWI offense associated with a license suspension based on a refusal, such suspension must either not be imposed or be rescinded. Tran. Code §724.048(c)

[1]For persons ≥21 yrs old, there is no "deferred adjudication" for a drunk driving offense. Code of Criminal Procedure Art. 42.12, §5(d) For persons <21 yrs old, there is no "deferred adjudication" for a drunk driving offenses committed under the Penal Code and for a 3rd or sub offense of driving with any detectable amount of alcohol in the system. Family Code §53.03(g) Note: Under "deferred adjudication", a defendant is placed on probation and, after the probation period has been successfully completed, the charges against the defendant are dismissed.

[2]Even though the law specifically provides that a suspension based on a refusal cannot be "probated", an occupational license may be issued after the mandatory suspension period. Note: A court order granting an occupational license must also order the driver to submit to alcohol and drug counseling and rehabilitation. Tran. Code §§521.242, 521.251 & 724.045

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 1 and Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off (Cl B Misd)-**72 hrs to 180 dys**; 2nd off (w/n 10 yrs) (Cl A Misd)-**15 dys to 1 yr**; sub off (w/n 10 yrs) (3rd Degree Felony)-**2 to 10 yrs** Penal Code §§12.21, 12.22, 12.34, 49.04 & 49.09 Note: Penal Code §12.42 provides for increased imprisonment sanctions for repeat felony offenses. Persons Under 21 Years Old (BAC >0.00)-1st off-**None**; sub off-Not more than **180 dys** Alcoholic Beverage Code §106.041(b) & (c)
Mandatory Minimum Term:	1st off (Cl B Misd)-**None**[2] (It appears the court may allow a DWI offender to participate in community supervision without first having to complete a mand period of confinement.); 2nd off (w/n 10 yrs) (Cl A Misd)-**15 dys** (not less than 3 dys of continuous confinement if community supervision is granted); sub off (w/n 10 yrs) (3rd Degree Felony)-**2 yrs** (not less than 10 dys of continuous confinement if community supervision is granted) Penal Code §49.04(b) & Code of Criminal Procedure Art. 42.12, §13 Note: Under Penal Code §12.44, a 3rd Degree Felony offender may receive the imprisonment sanction of a Cl A Misd. Penal Code §§49.04 & 49.09 and Code of Criminal Procedure Art. 42.12, §13(a) See Treatment Alternative to Incarceration on p. 3-459 and Alcohol Treatment on p. 3-461. Important. See Miscellaneous Sanctions on p. 3-461. Persons Under 21 Years Old (BAC >0.00)-1st off-**N/A**; sub off-**None** Alcoholic Beverage Code §106.041(b) & (c)
Fine:	
Amount ($ Range):	1st off (Cl B Misd)-Not more than **$2,000**; 2nd off (w/n 10 yrs) (Cl A Misd)-Not more than **$4,000**; sub offs (w/n 10 yrs) (3rd Degree Felony)-Not more than **$10,000** Penal Code §§12.21, 12.22, 12.34, 49.04 & 49.09 Persons Under 21 Years Old (BAC >0.00)-1st off (Cl C Misd)-Not more than **$500**; sub off-**$500 to $2,000** Alcoholic Beverage Code §106.041(b) & (c) and Penal Code §12.23
Mandatory Min. Fine ($):	**None**

[1]A person commits Intoxication Assault, a 3rd degree felony, if they cause "serious bodily injury" while DWI. The sanctions for this offense are incarceration from 2 to 10 yrs and/or a fine of not more than $10,000. If community supervision is granted, the defendant must serve 30 dys of continuous confinement. Penal Code §§12.34 & 49.07 and Code of Criminal Procedure Art. 42.12, §13(a) There is no deferred adjudication for this offense. Code of Criminal Procedure Art. 42.12, §5(d)

[2]If a 1st offender had in their immediate possession an open container of an alcoholic beverage, the minimum term of confinement is 6 dys. Penal Code §49.04(c)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Tharp v. State,* 935 S.W.2d 157 (Tex.Cr.App. 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:

Community Service:

Yes A person convicted of a criminal offense may be required to perform community service according to the schedule listed below. This sanction is in addition to and not in lieu of other sanctions. 2nd Cl Felony-240 to 800 hrs; 3rd Cl Felony-160 to 600 hrs; Cl A Misd-80 to 200 hrs; and, Cl B Misd-24 to 100 hrs Code of Criminal Procedure Art. 42.12, §16 & *Mills v. State,* 799 S.W.2d 447 (Tex.App. - Corpus Christi 1990)
Persons Under 21 Years Old (BAC >0.00)-1st off (Cl C Misd)-**8 to 12 hrs**; sub off-**20 to 40 hrs** Alcoholic Beverage Code §106.041(d)

Restituaion
(eg Victim's Fund)

Yes I. As a condition of community supervision Code of Criminal Procedure Art. 42.12, §11(14) II. A victim of a DWI offense can receive payments from a State victims' compensation fund via the State attorney general. Code of Criminal Procedure Art. 56.31 et seq.

Other:

Ignition Interlock (community supervision). For a 1st DWI[1] off conviction, in situations where a defendant has been placed on community supervision, the court may require that the offender install an "ignition interlock" device on their vehicle. For 2nd and sub DWI[1] off convictions, in situations where a defendant has been placed on community supervision, the court must require that the offender install an "ignition interlock" device on their vehicle.[2] Code of Criminal Procedure Art. 42.12, §13(i)
Ignition Interlock (occupational license based on essential need). When applying for an occupational license, the court may require a 1st offender[1&3] and must require a sub offender[1&3] to only operate vehicles that are equipped with ignition interlock devices.[2] Tran. Code §521.246
Ignition Interlock (via magistrate after release). Unless the interests of justice indicate otherwise, a magistrate shall require an offender,[4] after their release from confinement, to only operate vehicles that are equipped with ignition interlock devices. Code of Criminal Procedure Art. 17.441.

[1]Also includes the offenses of Intoxicated Assault and Intoxication Manslaughter.
[2]An offender may obtain an exemption from using an ignition interlock device if they are required to operate a motor vehicle as part of their employment and if the vehicle to be used is owned by their employer. However, such exemption does not apply in the situations where the offender is self employed and owns the vehicle. Code of Criminal Procedure Art. 42.12, §13(i), Tran. Code §521.246 & Civil Statutes Art. 6687b, §23A(f) See Footnote No. 2 above for information concerning the repeal of and amendments made to Civil Statutes Art. 6687b, §23A(f).
[3]Offenders, who do not have a prior record of either an impled consent refusal, an admin. per se violation or DWI conviction, can receive an occupational license without delay. However, an offender, who has had a previous refusal or admin. per se violation (w/n 5 yrs), must wait 90 dys to obtain such a license. Likewise, an offender, who has had a prior DWI offense conviction (w/n 5 yrs), must wait 180 day before obtaining occupational driving privileges. The information in this footnote is contained in amended §23A(f) of Civil Statute Art. 6687b and is located after Tran. Code §521.246. Note: Tran. Code §521.246 replaced §23A(f) of Civil Statutes Art. 6687b. §§1 & 24(a) of Ch. 165, Laws of 1995 However, §76 of Ch. 318, Laws of 1995, amended §23A(f) of this article following its repeal by Ch. 165. Nevertheless, via Gov't. Code §311.03(c), the amended provision remains valid.
[4]A person who has been convicted of either Intoxicated Assault, Intoxicated Manslaughter or a subsequent DWI offense.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)

Rehabilitation Fee. A person convicted of a DWI offense must pay a **$25** fee which is deposited into a comprehensive rehabilitation fund. Code of Criminal Procedure §§102.081(b), 102.084 & 102.085 and Human Resources Code §111.060
EMS Cost. A defendant who causes an accident as a result of a DWI offense, is liable up to **$1,000** for the cost of any emergency response that was necessitated by such accident. Code of Criminal Procedure Art. 102.017(c)
Treatment Alternative to Incarceration. In counties with a population ≥550,000, an alcohol/drug treatment program must be established as an alternative to jail. Screening and assessment must be a part of this program when a person has been arrested for an offense in which use or possession of alcohol/drugs is an element. Health and Safety Code §461.017

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

See the Special Note below and Double Jeopardy on p. 3-457.
≥**0.10** BAC/BrAC/UrAC[1] I. Admin Per Se Action-**Susp 60 dys**[2] An occupational license may be issued at any time based on essential need. II. Admin Per Se Action where there has been either a previous admin per se action or a refusal to submit to a chemical test w/n 5 yrs-**Susp 120 dys**[2] (90 dys mand) III. Admin Per Se Action where there has been a previous DWI offense conviction w/n 5 yrs-**Susp 180 dys**[2] (mand) After the mand susp period, an occupational license may be issued based on essential need. Note: A court order granting an occupational license must order the driver to submit to alcohol and drug counseling and rehabilitation. Tran. Code §§521.241, 521.242, 521.245, 521.251, 524.011, 524.012 & 524.022(a)
Persons Under 21 Years Old-BAC >0.00[3]-1st Admin. Per Se Action-**Susp 60 dys** (30 dys mand); 2nd Admin. Per Se Action-**Susp 120 dys** (90 dys mand); Sub Admin. Per Se Action-**Susp 180 dys** (mand) A person is eligible for an occupational license after the mandatory suspension period. Note: A prior drunk driving offense conviction is considered a prior action for license sanctions enhancement purposes. Tran. Code §§524.001, 524.012 and 524.022(b) & (c)

Other:

[1]See the definition of "alcohol concentration" in Penal Code §49.01. Tran. Code §524.001(1)
[2]The law specifically provides that a suspension based on an admin per se action cannot be "probated". Tran. Code §524.021(b)
[3]The law provides that license suspension is based on operating a motor vehicle with any detectable amount of alcohol in the system. Tran. Code §524.012(b)(2)

Special Note: I. An admin. per se suspension is either not imposed or recinded if a driver is acquitted of the drunk driving offense (including offenses committed by persons <21 yrs old who are driving with any detectable amount of alcohol in their system) associated with such suspension. Tran. Code §524.015(b)
II. An admin. per se suspension is credited towards a suspenions imposed for a DWI offense conviction. Tran. Code §524.023

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): **Susp** Tran. Code §521.344

Term of License Withdrawal (Days, Months, Years, etc.): I. The following susps must be based on a conviction that resulted from the introduction of alcohol into the body (includes Intoxicated Assault). 1st off-**90 to 1 yr** (365 dys)[1&2]; subsequent off-**180 dys to 2 yrs**[1&2] Tran. Code §521.344(a) & Code of Criminal Procedure Art. 42.12, §13(k) II. DWI offense based on driving while intoxicated by a "controlled substance"-**Susp 180 dys** Tran. Code §§521.371 & 521.372 A person is eligible for driving privileges based on an essential need to drive. Tran. Code §§521.241 et seq. & 521.377(b)

Mandatory Minimum Term of Withdrawal: **Special Note:** I. Offenders may be issued an an occupational license based on "essential need". Important. See Ignition Interlock on p. 3-458. However, a person cannot be issued such a license if they have had such a privilege w/n the past 10 yrs for a prior DWI offense conviction.[2] Tran. Code §521.242
II. 1st offenders, who are over 21 years old and who are placed on probation, are not subject to license suspension if they attend and alcohol education program. Tran. Code §521.344(d) and Code of Criminal Procedure §13(h) & (j)

[1]**DWI Offenders Under 21 Years Old.** License suspension for 1 yr. Except as noted, the licensing agency must suspend the offender's license regardless of whether the offender has been placed on probation and ordered to complete an alcohol education program. A persons's license is not subject to suspension if they are placed under community supervision and are required to only operate motor vehicles that are equipped with **ignition interlock** devices. Tran. Code §521.342 An occupational license is available. Tran. Code §§521.241 et seq., 521.342(c) and the provision following §521.342 (Note: Tran. Code §521.342 replaced §24(a-1) of Civil Statutes Art. 6687b. §§1 & 24(a) of Ch. 165, Laws of 1995 However, §§77 and 79 of Ch. 318, Laws of 1995, amended §24(a-1) of this article following its repeal by Ch. 165. Nevertheless, via Gov't. Code §311.03(c), the amended provision remains valid.) Under separate provisions of law, a 1st offender (and possibly a subsequent one), who is placed on community supervision, must have their license suspended for 90 dys and can only operate motor vehicles that are equipped with ignition interlock devices. Code of Criminal Procedure Art. 42.12, §13(m) Note: There are two versions of this subsection. The reference is to the second version.
DWI Offenders Under 17 Years Old. A suspension until the person reaches 19 or for 365 dys whichever is the longer suspension period. An occupational license is available if the person is eligible for a provisional license. Tran. Code §521.241 et seq. and Family Code §§51.02(2) and 54.042(a)(1), (c) & (d)
[2]I. For all DWI offenders a license cannot be suspended if a jury recommends community supervision and against such suspension. Tran. Code §521.344(d) & Code of Criminal Procedure Art. 42.12, §§4 & 13(g) **Comment:** As written, Tran. Code §521.344(d) and Code of Criminal Procedure Art. 42.12, §4 could be construed to also include 2nd and subsequent DWI offenders. II. An offender's license cannot be suspended if they are required to attended an alcohol education program as part of probation. However, if a person has been previously convicted of a DWI offense regardless of the time period between offenses and they have previously attended an alcohol education program as part of probation, their license must be suspended. Tran. Code §521.344(d), Code of Criminal Procedure Art. 42.12, §13(k), & *Texas Dept. of Public Safety v. Duarte,* 809 S.W.2d 611 (Tex.App. — Corpus Christi 1991)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Rehabilitation:

Alcohol Education: **Yes** For any DWI offense, including Intoxication Assault and Intoxication Manslaughter, an offender may be required as a condition of community supervision to complete an alcohol education program. This requirement may be waived upon a showing of good cause by the offender. Code of Criminal Procedure Art. 42.12, §13(h) & (j)
Persons Under 21 Years Old (BAC->0.00)-1st off-An offender **must** attend an alcohol awareness course; sub off-An offender **may** be required to attend an alcohol awareness course Alcoholic Beverage Code §§106.041(d) & 106.115

Alcohol Treatment: **Yes** Felony offenders (3rd or sub. DWI offenses, Intoxication Assault and Intoxication Manslaughter) may be confined in a substance abuse treatment facility in lieu of imprisonment from 6 mos to 1 yr. Code of Criminal Procedure Art. 42.12, §14

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **Forfeiture (Does Not Appear to be Mandatory)** A defendant's veh may be subject to forfeiture by the State following three or more DWI convictions. Tran. Code §704.001

Terms Upon Which Vehicle Will Be Released:

Other: **None**

Miscellaneous Sanctions Not Included Elsewhere: **Work Release.** For misdemeanor and felony offenses (where imprisonment is in a county jail), the court may allow an offender to participate in a work release program. Code of Criminal Procedure Art. 42.034.
Intermittent Sentence. A sentence may be served intermittently including confinement as a condition of community supervision. Code of Criminal Procedure Art. 42.033
Electronic Monitoring. An offender may serve a county jail sentence via electronic monitored "house arrest". Code of Criminal Procedure Art. 42.035

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥0.04 (Standards: Grams of alc per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol concentrations or the presence of a controlled substance or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Tran. Code §§522.003(1), (2), (5), (9) & (23), 522.081, 522.082, 522.085, 522.086, 522.101 and 522.102

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes**[1] **Intoxication Manslaughter**[2] (DWI related death) 2nd Degree Felony Penal Code §49.08
Sanctions:	
Criminal Sanction:	See Community Service for DWI offenders on p. 3-458.
Imprisonment (Term):	2nd Degree Felony-**2 to 20 yrs** Penal Code §12.33
Mandatory Minimum Term:	**120 dys** if community supervision is granted. Art. 42.12, §13(b) Code of Criminal Procedure
Fine ($ Range):	2nd Degree Felony-Not more than **$10,000** Penal Code §12.33
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Susp** Tran. Code §521.344(b)
Length of Term of Licensing Withdrawal:	**180 dys to 2 yrs** Tran. Code §521.344(b) For persons under 21 years old-susp 1 yr (appears to be mand) Tran. Code §521.342(b)
Mandatory Action--Minimum Length of License Withdrawal:	**None** An offender may be issued an occupational (restricted) lic. with an ignition interlock requirement based on "essential need".[3] Tran. Code §521.241 et seq. See Ignition Interlock on p. 3-458.
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	1st off-not less than **72 hrs** nor more than **6 mos.**; 2nd & sub. off (Class A Misd)-not more than **1 yr** Tran. Code §521.457 & Penal Code §12.21
Mandatory Minimum Term of Imprisonment:	**None**

[1]A person, who has killed another while driving a vehicle in a reckless or negligent manner while intoxicated, may also be convicted of involuntary manslaughter with the use of "deadly weapon". Penal Code §1.07(a)(17)(B), *Ray v. State,* 880 S.W.2d 795 (Tex.App. — Houston [1st Dist.] 1994), *Martinez v. State,* 883 S.W.2d 771 (Tex.App. — Fort Worth 1994), *Tyra v. State,* 897 S.W.2d 796 (Tex.Cr.App. 1995), & *Hall v. State,* 935 S.W.2d 852 (Tex.App. — San Antonio 1996)
[2]There is no deferred adjudication for this offense. Code of Criminal Procedure Art. 42.12, §5(d)
[3]**Offenders Under 21 Years Old.** The court may place these offenders on community supervision. If the court takes this action, it must suspended their driving privileges for 90 dys and require that such offenders only operate motor vehicles that are equipped with ignition interlock devices. Code of Criminal Procedure Art. 42.12, §13(m)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: There are two provisions that make it in an offense to operate a CMV during either a CDL disqualification or a CDL out-of-service order. Under Tran. Code §522.011, such offense is a Cl C misd with a fine, per Penal Code §12.23, of not more than $500. Under Tran. Code §522.071, such an offense is considered the same as driving while suspended or revoked per Tran. Code §521.457.

Other Criminal Actions Related to DWI: (continued)

Fine ($ Range):	1st off-not less than **$100** nor more than **$500**; 2nd and sub. off-not more than **$4,000** Tran. Code §521.457 & Penal Code §12.21
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp** Tran. Code §521.294(b)(1) & (c)
Length of Term of License Withdeawal Action:	The regular suspension period is the lesser of either an additional period that is equal to the original period or for 1 yr.
Mandatory Term of License Withdrawal Action	**None** A restricted license may be issued based on essential need. Tran. Code §521.241 et seq.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** Tran. Code §521.294(h)
Grounds for Being Declared an Habitual Offender:	"Any person with 4 or more convictions arising out of different transactions in a consecutive period of 12 mos or 7 or more convictions arising out of different transactions w/in a period of 24 mos...." Tran. Code §521.294(h)
Term of License Rev While Under Habitual Offender Status: Offender Status:	**Susp** for not more than **1 yr** Tran. Code §521.294(c) An occasional license may be issued on a showing of "essential need". Tran. Code §521.241 et seq.
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**None**
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1986) Alcoholic Beverage Code §§106.01, 106.02 & 106.03[1]
Minimum Age (Years) Possession:	**21** Alc. Bev. Code §§106.01 & 106.05 Exemptions for employment or while in the presence of a parent or guardian.
Minimum Age (Years) Consumption:	**21** Alc. Bev. Code §§106.01 & 106.04 Exemption for a minor's consumption of alcoholic beverages when they are in the "visible presence" of a parent or guardian.

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes**[2] Alcoholic Beverage Code §2.01 et seq. See Footnote No. 3. Under §2.02(b)(1), in order for a licensee to be liable, it must be proven that the patron was "obviously intoxicated to the extent that he presented a clear danger to himself and others" at the time they were sold/served alcoholic beverages. Also, under §2.03, these code provisions provide the exclusive remedy in situations were the patron is 18 years old or older.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** Note: The following case law may have been aborgated in part by the above provisions of the Alcoholic Beverage Code. *El Chico Corp. v. Poole,* 732 S.W.2d 306 (Tex. 1987)
Dram Shop Actions-Social Hosts:	**Yes-Limited** *Graff v. Beard,* 858 S.W.2d 918 (Tex. 1993)[4], *Ryan v. Friesenhahn,* 911 S.W.2d 113 (Tex.App. — San Antonio 1995)[4], *Smith v. Merritt,* 940 S.W.2d 602 (Tex. 1997)[5], & *Kovar v. Krampitz,* 941 S.W.2d 249 (Tex.App. — Houston [14 Dist.] 1996)[6]

[1]Selling Alcoholic Beverages to a minor with criminal negligence.

[2]Because of the principle of sovereign immunity, Indian tribes are not subject to civil liability under the State's dram shop law. *Holguin v. Ysleta Del Sur Pueblo,* 954 S.W.2d 843 (Tex.App. — El Paso 1997)

[3]Note: Under §106.14 of the Alcoholic Beverage Code, actions of employees in serving alcoholic beverages to either minors or intoxicated persons are not attributable to employers if (1) the employer has required its employees to take alcoholic beverage seller training, (2) the employees have completed this training and (3) the employer has not encouraged employees to sell alcoholic beverages to either minors or intoxicated persons.

[4]The *Graff* case concerned a situation where a social host served alcoholic beverages directly to a guest (an adult) who become intoxicated. The social host was held not liable for the injuries caused by the intoxicated guest to third parties. See also *Walker v. Children's Services, Inc.,* 751 S.W.2d 717 (Tex.App. — Amarillo 1988), where no social host liability was found in a situation where an intoxicated adult guest was injured in a vehicle accident after consuming alcoholic beverages at a party. However, in *Ryan,* a social host was found liable for the death of a minor guest (a person <21 yrs old per Alcoholic Beverage Code §106.01) who had consumed alcoholic beverages at a party given by the host.

[5]In the *Smith* case, the court held that a social host owed no common law duty of care to avoid serving alcoholic beverages to a minor and thus there was no liable under general common law for injuries caused by such a minor. Likewise, the court held that there was no negligence per se cause of action against a social host for damages resulting from a violation of the alcoholic beverage control law which prohibits the service of alcoholic beverages to persons <21 yrs old. Note: This decision by the Texas Supreme Court revered, in part, one by the Texas Court of Appeals. *Smith v. Merritt,* 929 S.W.2d 456 (Tex.App. — Tyler 1995)

[6]In *Kovar*, the court held that, since a social host did not provide alcoholic beverages to a minor guest, they were not liable for the minor's death resulting from intoxication. The minor was killed in an automobile accident while driving in an intoxicated condition.

Other State Laws Related To Alcohol Use: (continued)

Other:	Under the Dram Shop Law, a licensee may be held liable for the injures sustained by an intoxicated patron. *Smith v. Sewell,* 858 S.W.2d 350 (Tex. 1993) Under common law negligence, an employer may be liable for the injuries sustained by an intoxicated employee where such intoxication occurred at an "after work hours" event sponsored by the employer. The extent of the employer's control over the employee will determine whether there is a duty of care to protect the employee from harm. *Spruiell v. Schlumberger Ltd.,* 809 S.W.2d 935 (Tex.App. — Texarkana 1991) (possible liability), & *Whitney Corp. v. George Distributors,* 950 S.W.2d 82 (Tex.App. — Amarillo 1997) (no liability)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** Alcoholic Beverage Code §101.63
Term of Imprisonment:	1st off-Not more than **1 yr**; 2nd off-Not more than **1 yr** Alcoholic Beverage Code §§101.63(b) & 101.63(c)
Fine ($ Range):	1st off-Not less than **$100 nor more than $500**; Subsequent off-Not less than **$500 nor more than $1,000**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes**[1]
Length of Term of License Withdrawal:	**Suspended** for not more than **60 dys**, revoked or cancelled Alcoholic Beverage Code §§11.61, 32.17 and 61.71
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd**[2]
Term of Imprisonment:	Not more than **1 yr**[3] Alcoholic Beverage Code §§106.01 & 106.03
Fine ($ Range):	1st off-Not less than **$100 nor more than $500**; Subsequent offense-**$500 to $1,000** Alcoholic Beverage Code §106.03

[1]In lieu of a suspension, the licensee may be allowed to pay a civil fine of not less than $150 for each day of the proposed suspension.
[2]Alcoholic Beverage Code §11.621 The sale to a minor must be with criminal negligence. §106.03(a) of the Alcoholic Beverage Code
[3]Applies to both a 1st and sub off.

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes**[1] Alcoholic Beverage Code §§106.13 & 61.71(a)(5)
Length of Term License Withdrawal:	1st off-suspended for not more than **60 dys** or cancelled; 2nd off-suspended for not more than **3 mos** or cancelled; 3rd off (within 36 mos)-suspended/cancelled for not more than **12 mos**
Anti-Happy Hour Laws/Regulations:	**Yes** Rule 060.09.04.001 (regulation)
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No** See Footnote No. 2 on p. 3-457.
Anti-Consumption Law (Yes/No):	**Yes** Applies only to drivers Penal Code §49.03

[1]In lieu of a suspension, the licensee may be allowed to pay a civil fine of not less than $150 for each day of the proposed suspension.

STATE:	**UTAH**
General Reference:	Utah Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §41-6-44(2)(a)(ii)
Illegal Per Se Law (BAC/BrAC):	≥**0.08**[1&2] §41-6-44(2)(a)(i) **Any Measurable Controlled Substance** in the Body[3] §41-6-44.6
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** or (2) a Combination of Any Drug and Alcohol §41-6-44(2)(a)(ii)
Other:	For Commercial Motor Vehicle Operators, see p. 3-471. See **No Alcohol Condition License** under Miscellaneous Sanctions on p. 3-472.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §41-6-44.10(2)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §41-6-44.10(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §41-6-44.10(8)
Other Information:	It may be possible to obtain a blood sample without the driver's consent. Both the DWI law's evidence admissibility provisions and the automobile homicide law provide that "[e]vidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by Rules of Evidence or the constitution." §§41-6-44.5(b) & 76-5-207(6)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §41-6-44.10
Urine:	**Yes** §41-6-44.10
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No** Note: A Magistrate may not grant diversion in a DWI case. §77-2-9
Anti-Plea Bargaining Statute (Yes/No):	**No** Note: If the defendant pleads guilty or *nolo contendere* to reckless driving as a substitute for a DWI charge, the prosecution must state for the record whether alcohol or drugs were related to the pleaded off. §41-6-44(10)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol assessment is required. §§41-6-44(4) & (5) and 53-3-231(10)(a)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.
[2]Alcohol concentration is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §41-6-44(2)(c)
[3]Unless the driver was using the controlled substance via a valid prescription.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**Rev 1 yr**[1] (Mand) If the driver has had a previous refusal, admin. per se action or DWI offense conviction which occured after 7/1/93-**Rev 18 mos**[1] (mand) §41-6-44.10(2)(e), (f) & (h)
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 2 and Double Jeopardy below.
Imprisonment:	See **Serious Bodily Injury DWI Offenses** under Miscellaneous Sanctions on p. 3-472.
Term (Day, Month, Years, (etc.):	1st and 2nd off (w/n 6 yrs)-Class B misd-not more than **6 mos**; 3rd or sub off (w/n 6 yrs)-Class A misd-not more than **1 yr** **However**, if there are 3 prior convictions after 4/23/90 or 2 prior convictions after 7/1/96-3rd Degree felony-not more than **5 yrs** §41-6-44(3), (6) & (7) 1st or 2nd DWI off-where there (1) is an injury related to negligent action or (2) is a passenger under 16 yrs old (**child endangerment**)-Class A misd-not more than **1 yr** §§41-6-44, 76-3-203(3) & 76-3-204 Any Measurable Controlled Substance in the Body-Class B misd-not more than **6 mos** §§41-6-44.6 & 76-3-204

Special Note & Comment: The Utah Code establishes two distinct drunk driving offenses. The standard categories of drunk driving offenses are contained in §41-6-44. However, the offense of driving with any measurable controlled substance in the body is contained in §41-6-44.6. A conviction under §41-6-44.6 is considered a prior offense for sanction enhancement purposes following a conviction under §41-6-44. However, there is no reciprocal provision in §41-6-44.6 concerning the use of convictions under §41-6-44 as prior offenses for sanction enhancement purposes.

[1]This sanction also applies to persons under 21 years old who refuse to submit to a chemical test to determine if they have violated §53-3-231(1). Sec. 53-3-231 provides for administrative (licensing) actions against such persons who drive a vehicle with any amount of alcohol in their body.
[2]A vehicle homicide offense is to be considered a prior DWI offense. §41-6-44(1)(a)(iv)

Double Jeopardy: Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Arbon,* 909 P.2d 1270 (UtahApp. 1996), & *City of Odem v. Crandall,* 760 P.2d 920 (UtahApp. 1988)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:	1st off-**48 cons hrs**[1]; 2nd off (w/n 6 yrs)-**240 cons hrs**[1]; 3rd or sub off (w/n 6 yrs)-**720 hrs** However, if there are 3 prior convictions after 4/23/90 or 2 prior convictions after 7/1/96-**1,000 hrs**[2] (in jail not prison) §41-6-44(4), (5), (6) & (7) Any Measurable Controlled Substance in the Body-**None**
Fine: Amount ($ Range):	1st and 2nd off (w/n 6 yrs) off-Class B misd-not more than **$1,000**; 3rd or sub off (w/n 6 yrs)-Class A misd-not more than **$2,500** However, if there are 3 prior convictions after 4/23/90 or 2 prior convictions after 7/1/96-3rd Degree felony-not more than **$5,000** §76-3-301 See Footnote Nos. 4 & 5. A 1st or 2nd DWI off-where there (1) is an injury related to negligent action or (2) is a passenger under 16 yrs old (**child endangerment**)-Class A misd-not more than **$2,500**[3] §§41-6-44 & 76-3-301 See Footnote No. 3. Any Measurable Controlled Substance in the Body-Class B misd-not more than **$1,000** §§41-6-44.6 & 76-3-301
Mandatory Min. Fine ($):	1st off-**$700**[1]; 2nd off (w/n 6 yrs)-**$800**[1]; 3rd or sub off (w/n 6 yrs)-**$2,000** However, if there are 3 prior convictions after 4/23/90 or 2 prior convictions after 7/1/96-**$1,500**[2] See Footnote Nos. 1 & 4. Any Measurable Controlled Substance in the Body-**None**
Other Penalties: Community Service:	1st off-Not less than **24 hrs** in lieu of imprisonment (24 hrs mandatory)[1]; 2nd off (w/n 6 yrs)-Not less than **80 hrs** in lieu of imprisonment (80 hrs are mandatory)[1]; 3rd or sub off (w/n 6 yrs)(including 3 prior convictions after 4/23/90 or 2 prior convictions after 7/1/96)-Not less than **240 hrs** in lieu of imprisonment (240 hrs are mandatory) §41-6-44(4), (5) & (6) **Special Note:** In 3rd Degree Felony situations, if the court suspends the excution of sentence, it (1) must impose a fine of not less than $1,500, (2) require a jail sentence of not less than 1,000 hrs and (3) must order the person to participate in an alcohol or drug dependency program which provides for intensive caser, inpatient treatment and long-term care. §41-6-66(6)(c)

[1]These minimum mand sanctions apply also to DWI offenses related to injury and child endangerment.
[2]This minimum mandatory sanction is imposed if the court suspends the execution of a prison sentence. §41-6-44(6)(c)
[3]The provisions of the drunk driving law may have limited this fine to $1,000. §41-6-44
[4]Under § 62A-8-302, the court is required to impose, in addition to the above fines, a special fine of between $50 to $200 for 1st offenders and $1,000 for 2nd and subsequent offenders; this special fine is for the purpose of funding alcohol education and treatment programs under §62A-8-303. In addition, under §62A-8-302(2), the Court is also required to impose other assessments that fully compensate agencies for the costs of treating DWI defendants. Defendants are also required to pay a fee of $100 into a Crime Victims' Reparations Trust Fund. §41-25-1
[5]Under §63-63a-1, a 25% surcharge is levied on all fines. The funds collected from this surcharge are used to fund the Crime Victim Reparation Trust Fund. §63-63a-4(3) In addition, a mand "traffic mitigation surcharge" of **$10** is imposed on all offenders. §63-63b-101

Sanctions Following a Conviction for a DWI Offense:
(continued)

Restitution (eg Victim's Fund):	**Yes** Either via a Victims' Compensation Fund (§63-63-1 et. seq.) or via direct payment by the defendant to the victim (§76-3-201)
Other:	**Ignition Interlock.** In addition to any other sanctions that may be imposed for a DWI offense, an offender may be required, as a condition of probation, only to operate motor vehicles that are equipped with ignition interlock devices. This requirement is mandatory if the offender is under 21 yrs old. §41-6-44.7
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-468.
Administrative Per Se Law:	**Yes**[1] I. (1) **BAC/BrAC ≥0.08** (For standards, see Footnote No. 2 on p. 3-467.), (2) **Any Measurable Amount of a Controlled Substance in the Body** or (3) Based on reasonable grounds that a person has violated the DWI law (§41-6-44) (e.g., driving while under the influence of alcohol or drugs) 1st admin. action-**Susp for 90 dys**; 2nd and subsequent admin. actions-**Susp for 1 yr** Note: These license susps appear to be mandatory. §§53-3-222 & 53-3-223 II. Admin. Actions-Persons Under 21 Years Old. A person under 21 years old, who operates a vehicle with **any measurable or detectable amount** of alcohol in their body, is subject to the following admin. licensing actions. 1st violation-"Denial"-**90 dys**; 2nd or sub. violation (w/n 3 yrs)-susp-**1 yr** These denial or susp actions appear to be mand. §53-3-231 III. For the admin. per se actions in I and II above, a person's license cannot be reinstated until they have completed any required alcohol or drug education or treatment program. §§41-6-44(8)(b) & 53-3-231(11)(b)(i) See Footnote No. 1 on p. 3-471.
Other:	Under §53-3-221(1)(a) & (8)(a), a person's license may be susp for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., 2nd or sub. DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.
Post DWI Conviction Licensing Action:	See the Special Note below.
Type of Licensing Action (Susp/Rev):	See **Serious Bodily Injury DWI Offenses** under Miscellaneous Sanctions on p. 3-472. 1st off (for either injury or non-injury related offs)-**Susp**; subsequent DWI off (w/n 6 yrs) (for either injury or non-injury related offs)-**Rev** §§41-6-44(11), 53-3-220 and 53-3-221 Any Measurable Controlled Substance in the Body-1st off-**Susp**; subsequent DWI off (w/n 6 yrs)-**Rev** §41-6-44.6(6)

[1]The admin. per se law appears to also cover situations where a person was operating a motor vehicle with a measurable amount of a controlled substance in their body.

Special Note: The licensing actions listed under Post DWI Conviction are those which are taken by the licensing agency. In addition to these actions, the court is authorized (but is not required) to either suspend or revoke a DWI offender's license for either 90 dys, 180 dys or 1 yr. The court may take this action in order to "remove from the highways those persons who have shown they are safety hazards." §41-6-44(12)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal (Days, Months, Years, etc.):	1st off (for either injury or non-injury related offs)-**180 dys**[1]; subsequent off[2] (w/n 6 yrs) (for either injury or non-injury related offs)-**2 yrs**[1] §41-6-44(11)(a) Any Measurable Controlled Substance in the Body-1st off-**180 dys**; subsequent off[2] (w/n 6 yrs)-**2 yrs** §41-6-44.6(6) **Important.** See Court Ordered Licensing Action under Miscellaneous Sanctions on p. 3-472.
Mandatory Minimum Term of Withdrawal:	1st off (for either injury or non-injury related offs)-**180 dys**[1]; subsequent off[2] (w/n 6 yrs) (either injury or non-injury related offs)-**2 yrs**[1] §41-6-44(11) No hardship license may be issued. §53-3-220(4)(a)(ii) Any Measurable Controlled Substance in the Body-1st off-**180 dys**; subsequent off[2] (w/n 6 yrs)-**2 yrs** §41-6-44.6(6) No hardship license may be issued. §53-3-220(4)(a)(ii)
Other:	
Rehabilitation:	
Alcohol Education:	**Yes**[3] For a 1st off, a judge must order a defendant to attend an alcohol or drug education program. §41-6-44(4)
Alcohol Treatment:	**Yes**[3] For a 1st or 2nd off, the court may order a defendant to obtain alcohol or drug treatment. And, for a 3rd or sub. off, the court must order a defendant to obtain alcohol or drug treatment. §41-6-44(4)(c)(ii), (5), (6) & (7) **Special Note:** An offender's driving privileges cannot be restored until they have (1) satisfactorily completed alcohol or drug assessment, education, treatment or rehabilitation program that has been ordered and (2) paid any fines or fees, including restitution fees, and rehabilitation costs. §§41-6-44(7)(b) & 41-6-44.6(7)

[1]The suspension or revocation period for an drunk driving conviction under §41-6-44 is reduced by any suspension period received under the administrative per se law. §41-6-44(11)(b)
[2]See the Special Note & Comment on p. 3-468.
[3]A person under 21 years old, who is subject to license denial or suspension because they have operated a motor vehicle with any amount of alcohol in their body, must be referred to a local substance abuse authority by the driver licensing agency for alcohol assessment (screening) and appropriate action. The person must complete any recommended action (e.g., alcohol education or treatment) before their license can be reinstated. §53-3-231(11)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of either alcohol, drugs or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. (Note: The CMV implied consent provision, §41-2-717(2), applies to the testing of both alcohol and drugs; however, the disqualification provision, §41-2-715(1)(e), applies only to a refusal to submit to a test for an alcohol concentration.) For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§53-3-102(5)(a), 53-3-102(9), 53-3-402(2), 53-3-402(5), 53-3-402(10), 53-3-402(11), 53-3-402(14), 53-3-414, 53-3-417 & 53-3-418

Sanctions Following a Conviction for a DWI Offense:
(continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: **None**
Terms Upon Which Vehicle Will Be Released:
Other: A vehicle used in a drunk driving offense may be temporarily impounded if its owner is the offender. §41-6-44.30

Miscellaneous Sanctions Not Included Elsewhere:

Assessments for Treatment. Following a conviction under either §§41-6-44 or 41-6-44.6, the court may assess a defendant an amount sufficient to "fully compensate agencies" for the cost of any treatment provided to such offender. §§62A-8-302 & 62A-8-303

Court Ordered Licensing Action. In order to remove from the highways those individuals who have shown they are safety hazards, the court may suspended or revoke a person's license for 90 dys, 180 dys or 1 yr following a conviction under §41-6-44. §41-6-44(12)

No Alcohol Condition License. A person, who has been convicted of any drunk driving offense (including a violation of the no alcohol driving condition) or who has refused to submit to chemical test under the implied consent law, can only have their license reinstated with a "no alcohol condition". This condition prohibits such a person from driving with **any amount of alcohol** in their body. For a 1st violation, this condition lasts for **2 yrs**. And, for a 2nd or subsequent violation, such condition lasts for **6 yrs**. A person, who violates this condition commits a Cl B Misd (jail for not more than **6 mos** and/or a fine of not more than **$1,000**) and is subject to a mand license revocation of **1 yr**. §§53-3-220(1)(a)(xiv), 53-3-225(1)(a), 53-3-232, 76-3-204(2) & 76-3-301(1)(d)

Serious Bodily Injury DWI Offenses. A person commits a 3rd Degree felony if they cause serious bodily injury[1] related to a DWI offense. The sanctions for this offense are an imprisonment term of not more than **5 yrs** and/or a fine of not more than **$5,000**. If the court suspends sentence and grants probation, it must, nevertheless, impose the following mandatory sanctions: Jail for 1,000 hrs; a fine of $1,500; and, alcohol or drug treatment. §§41-6-44(3)(b) & (6)(c), 76-3-203(3) and 76-3-301(1)(b) Note: The licensing sanctions for this offense are the same as for a regular DWI offense. §41-6-44(2), (3)(b) & (11)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **Yes Automobile Homicide** 1) "Simple" Negilgent Homicide: Death caused by operating a motor vehicle in a negligent manner while DWI or with an alcohol concentration ≥0.08-3rd degree felony §76-5-207(1) & (3)

[1]A "serious bodily injury" is defined as a "bodily injury that creates or causes serous permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death." §41-6-44(1)(b)

Other Criminal Actions Related to DWI: (continued)

	2) "Criminal" Negligent Homicide: Death caused by operating a motor vehicle in a criminally negligent manner (as defined by §76-2-103(4)) while DWI or with an alcohol concentration ≥0.08-2nd degree felony §76-5-207(2) & (3)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Simple Negligent Homicide-Not more than **5 yrs**; §76-3-203(3) Criminally Negligent Homicide-**1 to 15 yrs** §76-3-203(2)
Mandatory Minimum Term:	**None**
Fine ($ Range):	1) Simple Negligent Homicide-Not more than **$5,000**; 2) Criminal Negligent Homicide-Not more than **$10,000** §76-3-301(1)(a) & (b)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	For both offs-**Rev** §53-3-220(1)(a)
Length of Term of Licensing Withdrawal:	For both offs-**1 yr** §53-3-225
Mandatory Action--Minimum Length of License Withdrawal:	For both offs-**1 yr** No hardship license may be issued. §53-3-220(4)(a)(i)
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. 1.
Sanction:	
Criminal:	
Imprisonment (Term):	Cl B Misd **not more than 6 mos** §§41-6-44, 53-3-227(3)(a) & 76-3-204(2)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**Not more than $1,000** §76-3-301(1)(d)
Mandatory Minimum Fine:	**$750**[2]

[1]It is a Cl B misd to operate CMV during a CDL disqualification which was based either (1) on driving such a vehicle while either under the influence of alcohol or drugs or with an alcohol concentration ≥0.04 or (2) on a refusal to submit to a chemical test. The sanctions for this offense are an imprisonment term of not more than 6 mos and/or a fine of not more than $1,000 (with mand minimum of $750). It is a Cl C misd to operate a CMV during either a CDL disqualification which is not DWI related or a CDL out-or-service order. The sanctions for this offense are an imprisonment term of not more than 90 dys and/or a fine of not more than $750. In addition, the following licensing actions apply. If the offender was driving a CMV while disqualified, the disqualification period is extend for a like period. If an offender was driving a CMV while under a CDL out-of-service order, they are subject to the following CDL disqualification periods: (1) For a 1st violation, 90 dys to 1 yr; (2) for a 2nd violation (w/n 10 yrs), 1 to 5 yrs; and, (3) for a 3rd or subsequent violation (w/n 10 yrs), 3 to 5 yrs. If the out-of-service order violation involved the either (1) the transportation of hazardous materials or (2) the operation of a vehicle designed to carry 16 or more passengers, the offender is subject to the following disqualification periods: (1) For a 1st violation, 180 dys to 2 yrs; and, (2) for a 2nd or subsequent violation (w/n 10 yrs), 3 to 5 yrs. The minimum periods of disqualification appear to be mandatory. §§53-1-116, 53-3-220(2)(a), 53-3-227(1), (2) & (3), 53-3-404, 53-3-414(7), 76-3-204(2) & (3) and 76-3-301(1)(d) & (e)

[2]The fine shall be in an amount not less than the maximum fine for a Class C misdemeanor. §§53-3-227(3)(b) & 76-3-301(1)(e)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	For driving while suspended - **Susp**; For driving while revoked - **Rev** §53-3-220(2)
Length of Term of License Withdrawal Action:	An additional like period of susp or rev §53-3-220(2)
Mandatory Term of License Withdrawal Action:	The above licensing action is mandatory (i.e., no "limited" employment lic. can be issued) if the original rev/susp was for a DWI offense or for vehicle homicide. §53-3-220(4)(a)(iii)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**Yes** §26-1-30(17)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** (Adults only)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §§32A-12-203(1) & 32A-12-209 (Year Eff: 1935)
Minimum Age (Years) Possession:	**21** §32A-12-209
Minimum Age (Years) Consumption:	**21** §32A-12-209

Special Note: Title 32A, the Alcoholic Beverage Control Act (Title 32A) is repealed July 1, 1998. §63-55-232(1)

Other State Laws Related to Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** §32A-14-101(1)(A)[1] Damages are limited to $500,000 per person and $1,000,000 per occurrence. §32A-14-101(6) **Important.** The Dram Shop Law does not apply to either general food stores or other businesses that are licensed to sell "beer" at retail for off-premises consumption. §32A-14-101(10)
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No**
Dram Shop Actions-Social Hosts:	**Yes (Limited)** under the Dram Shop Law[2] §32A-14-101(2)(B)[1] Also, possible under common law[3]
Other:	**None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:	Class B **Misd** §§32A-4-106(10), 32A-12-104, 32A-12-204, 76-3-204(2), 76-3-301(1)(d) & 76-3-302(3)
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$1,000** for individuals and not more than **$5,000** for either corporations, associations, partnerships or governmental instrumentalities.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes**[4] **Suspension** or **Revocation** §32A-1-119
Length of Term of License Withdrawal:	**Suspension**: Time period not specified in the statute **Revocation**: At least **3 yrs** §32A-1-119(5)(e) **Administrative Fine.** An administrative fine of not more than $25,000 may be imposed in lieu of or in addition to a license suspension. §32A-1-107(5)(a)

[1]**Historical Note:** The Dram Shop Law was substantially revised in 1997. Chapter 94 of Session Laws of 1997

[2]A person (a social host) 21 years old or older, who serves alcoholic beverages to an underage person (i.e. a person under 21 years old) to the extent that such underage person becomes intoxicated, may be liable for any injuries caused by such young person. §32A-14-101(2)(B)

[3]**Comment:** A social host may be liable to a third party, who has been injured by an intoxicated guest, if it can be shown that a spacial relationship existed that required the social host to protect such third party from injury. This relationship may be difficult to establish especially in cases where the guest is an adult. E.g., consider the following factual situation. A 19 year old, a legal adult, was left alone at his parents home with instructions not to consume alcoholic beverages but did so nevertheless and became intoxicated and injured another minor. The Utah Court of Appeals held that the parents were not liable for the injuries sustained by the third party minor because the parents could not be accountable for the actions of their adult child who was not subject to their control. *Drysdale on Behalf of Stong v. Rogers,* 869 P.2d 1 (UtahApp. 1994)

[4]Under §32A-1-119(6)(b), employees in violation of this law may be prohibited, via a suspension action, from serving alcoholic beverages for a period of up to one (1) month. However, any employee who has had three (3) suspensions within a 36 consecutive month period may be prohibited from handling liquor, in the course of employment, for one (1) year.

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	Class A **Misd** §§32A-4-106(10), 32A-12-104, 32A-12-203, 76-3-204(1), 76-3-301(1)(c), & 76-3-302(2)
Term of Imprisonment:	Not more than **1 yr**
Fine ($ Range):	Not more than **$2,500** for individuals and not more than **$10,000** for either corporations, associations, partnerships or governmental instrumentalities.
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes**[1] **Suspension** or **Revocation** §32A-1-119
Length of Term License Withdrawal:	**Suspension**: Time period not specified in the statute; **Revocation**: At least **3 yrs** §32A-1-119(5)(e) **Administrative Fine.** An administrative fine of not more than $25,000 may be imposed in lieu of or in addition to a license suspension. §32A-1-107(5)(a)
Anti-Happy Hour Laws/Regulations:	**Limited** (1) Liquor may not be sold except at prices established by the State and (2) mixed drinks and wine cannot be sold at discount prices. §32A-4-106(11)(a) & (b) The law also provides that a patron cannot have more than one alcoholic beverage at a time. A single beverage is restricted to either 1 ounce primary liquor, 5 ounces of wine or 1 liter of heavy beer.[2] §32A-4-106(2)(c), (2)(d), (12) & (13)
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §41-6-44.20(2)
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §41-6-44.20(1)

[1]See Footnote No. 4 on p. 3-475.
[2]"Heavy beer" is defined as a fermented alcoholic beverage containing more than 4% alcohol by volume. §32A-1-105(19)

STATE:	**VERMONT**
General Reference:	Vermont Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor[1] 23 §1201(a)(2)
Illegal Per Se Law (BAC/BrAC):	≥**0.08**[2&3] 23 §1201(a)(1) Persons Under 21 Years Old-≥**0.02**[3]-A Civil Traffic Violation 23 §1216(a)
Presumption (BAC/BrAC):	A BAC/BrAC ≥**0.02**[3] w/n 2 hrs of a DWI incident is a "rebuttable presumption" that a person under 21 yrs old committed a Civil Traffic Violation. 23 §1216(e)
Types or Drugs/Drugs and Alcohol:	Under the influence of (1) **Any "Regulated" Drug**[4] or (2) a Combination of Any "Regulated" Drug and Alcohol 23 §1201(a)(3)
Other:	(1) A BAC/BrAC ≥**0.08**[3] is a "permissive inference" of a DWI offense. 23 §1204(a)(2) (2) A BAC/BrAC ≥**0.10**[3] w/n 2 hrs of a DWI incident is "permissive inference" of such offense. 23 §1204(a)(3) For Commercial Motor Vehicle Operators, see p. 3-478.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** 23 §1203(f)
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[5] 23 §1202(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes**[6] 23 §1202(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) 23 §1202(b)
Other Information:	I. A driver, who is involved in a fatal "incident or collision" where there is reasonable grounds to believe that they had either alcohol or "other drug" in their system, is subject to the implied law. I.e., they are required to submit to a chemical test of their breath or blood chemical for alcoholic content and, if they refuse to submit to such a test, their driver's license is suspended or revoked. 23 §1202(a) II. A driver, who is involved in an accident that resulted in either a bodily injury or death to another and who refuses to submit to a blood or breath chemical test under the implied consent law, may be compelled to submit to a blood test via a search warrant.[7] 23 §1202(f)

[1]Includes all alcoholic beverages. 23 §1200(4)
[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.
[3]Alcohol concentration is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 23 §1200(1)
[4]"Drug" means regulated drugs as defined in 18 §4201. 23 §1200(2)
[5]Note: If a driver refuses to submit to a chemical test and the police officer had "reasonable grounds to believe" that the driver was DWI, the State may proceed to suspend/revoke the driver's license. 23 §1205
[6]A blood sample may be requested (1) if breath testing equipment is not available to determine alcoholic content or (2) if the law enforcement officer believes that the driver was under the influence of drugs. 23 §1202(a) & *State v. Greenia,* 522 A.2d 242 (Vt. 1987)
[7]**Comment:** The legislature apparently via 23 §1202(f) indirectly abrogated a decision of the State supreme court that prohibited the taking of a blood sample by force. Since the implied consent law allowed a person to refuse all testing, the court held that the State could not use involuntary means (force) to obtain a blood sample for chemical testing for alcoholic content, I.e., the State must persuade a driver to voluntary submit to a test or face certain licensing sanctions. *State v. Beyor,* 641 A.2d 344 (Vt. 1993)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** See Footnote No. 6 on p. 3-477.
Urine:	**No**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol assessment screening is mand for 2nd or subsequent offenders. 23 §§4(49), 1209a(a) & (d) and 1210(a)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	A person under 21, who has refused to submit to a breath test via a preliminary breath test screening device for the purpose of determining if they have a BAC/BrAC ≥0.02, is subject the licensing action for a Civil Traffic Violation on p. 3-480. 23 §1216(d)
Refusal to Take Implied Consent Chemical Test:	See Criminal Refusal below.
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal-**Susp 6 mos** (mand)[1]; 2nd refusal-**18 mos susp** (mand)[1]; 3rd or subsequent refusal-**Susp for life** (3 yrs mand)[1] 23 §1205(a) & (m)
Other:	

[1]See Rehabilitation on p. 3-480.

Criminal Refusal. A vehicle operator commits "Criminal Refusal" if they refuse to submit to either a blood or breath evidentiary test under the following circumstances: Either (1) the person has a previous drunk driving offense violation and there is reasonable grounds to believe that they violated the drunk driving laws or (2) the person was involved in an accident that resulted in either a bodily injury or death and there was reasonable grounds to believe that they had alcohol in their system. 23 §1201(b) & (c) Sanctions: The sanctions for "Criminal Refusal" are the same as for a drunk driving offense. 23 §§1208 & 1210

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (See Footnote No. 3 on p. 3-477.), (2) are under the influence of either "intoxicating liquor" or drugs (or under the combined influence of alcohol and any drug) or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. 23 §§4(59), 1218, 1219, 4103(5) & (12) and 4116

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy and the Special Note below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off (Misd)-Not more than **2 yrs**; 2nd off (Misd)-Not more than **2 yrs**; 3rd and sub. off (felony)-Not more than **5 yrs**; Serious injury related DWI off (felony)-**1 to 15 yrs** 13 §1 & 23 §1210
Mandatory Minimum Term:	2nd DWI off-**48 cons hrs** 23 §1210(c)
Fine:	
Amount ($ Range):	1st off-Not more than **$750**; 2nd off-Not more than **$1,500**; 3rd and sub. off-Not more than **$2,500**; Serious injury related DWI off-Not more than **$5,000** 23 §1210.
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	**Yes** Community service may be imposed as part of the sentence. 13 §7030
Restitution (eg Victim's Fund):	**Yes** The court may order a defendant to pay restitution to a victim. 13 §7043
Other:	**Surcharges.** In addition of any fine, an offender must pay the following surcharges. A surcharge of **$60** which is used to fund the Health Department's Laboratory Services Special Fund. A surcharge of **$50** which is used to fund public defenders special fund. And, a surcharge of **$50** which is used to fund drunk driving law enforcement. 23 §1210(h), (i) & (j)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy below.
Administrative Per Se Law:	**Yes** ≥**0.08** BAC/BrAC See Footnote No. 3 on p. 3-477 and Rebuttable Resumption below. 1st action-**Susp 90 dys** (mandatory)[1]; 2nd action-**Susp 18 mos** (mandatory)[1]; 3rd or sub. action-**Susp for life** (3 yrs mandatory)[1] See Footnote Nos. 2 & 3. 23 §1205
Other:	**None**

[1]See Rehabilitation on p. 3-480.
[2]Under 23 §1205(o), suspensions for admin. per se actions and for DWI convictions are to run concurrently.
[3]Title 23 §1205(m) creates a rebuttable presumption that a persons's alcohol concentration was ≥0.08 at the time of operating a motor vehicle if such was w/n two (2) hours after such operation.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Strong,* 605 A.2d 510 (Vt. 1991), *State v. O'Brien,* 609 A.2d 981 (Vt. 1992), & *State v. Becker,* 669 A.2d 548 (Vt. 1995)

Special Note: A person under 21 years old, who is charged with a Civil Traffic Violation for operating a motor vehicle with a BAC/BrAC ≥0.02, cannot be assessed either a fine or points. 23 §1216(f)

Rebuttable Presumption. If a person's alcohol concentration w/n 2 yrs of driving is ≥0.08, there is rebuttable presumption that the person was operating a motor vehicle at or above this level. 23 §1205(n)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): 1st off-**Susp**; 2nd off-**Susp**; 3rd or subsequent offs-**Rev** 23 §§1206 and 1208 See Footnote No. 2 on p. 3-479.

Term of License Withdrawal (Days, Months, Years, etc.): 1st off-**90 dys**; 2nd off-**18 mos**; 3rd or subsequent off-**Life**

Mandatory Minimum Term of Withdrawal: 1st off-**90 dys**; 2nd off-**18 mos**; 3rd or sub offs-**3 yrs** See Rehabilitation below.

Persons Under 21 Years Old (Civil Traffic Violation-BAC/BrAC ≥0.02): 1st violation-**Susp-6 mos** (mand) plus an alcohol and alcohol program. Following this, person must complete alcohol screening and any needed treatment program; 2nd or sub. violation-**Susp 1 yr or until the person reaches age 21** whichever is longer (1 yr mand). The person must also be making substantial progress in completing a therapy program. Any education, treatment or therapy programs must be completed prior to license reinstatement. 23 §§1209a & 1216(a)(1) & (2)

Other:

Rehabilitation:

Alcohol Education: **Yes**

Special Note No. 1: For a 1st license suspension based on a refusal, an admin. per se action or a DWI conviction, a defendant must complete an alcohol and driver education program. After this program, the person must submit to an assessment to determine if additional therapy is needed. The defendant must complete any required education or therapy prior to license reinstatement. 23 §§1205, 1206, 1208 & 1209a(a)(1)

Special Note No. 2: For a 2nd suspension based on refusals, admin. per se actions or DWI off convictions, a defendant has to successful complete an alcohol and driving rehabilitation program and has to completed or show that they are making substantial progress in completing a therapy program prior to license reinstatement. 23 §§1205, 1206, 1208 & 1209a(a)(2)

Special Note No. 3: For a 3rd or subsequent suspension based on refusals, admin. per se actions or DWI off convictions, a defendant has to completed or show that they are making substantial progress in completing a therapy program prior to license reinstatement. 23 §§1205, 1206, 1208 & 1209a(a)(3)

Special Note No. 4: If a person has had their license suspended/revoked (1) for at least 3 yrs or (2) for life as a result of a refusal, admin. per se action, a DWI conviction or, for driving with a BAC/BrAC ≥0.02 if they were <21 yrs old, they may have their license reinstated provided they have abstained from the consumption of alcohol for respectively 2 or 3 yrs. The abstinence period does not include any period of time the person was incarcerated in a correctional facility. In the case of a lifetime suspension, a person is eligible for license reinstatement only once.
23 §§1205, 1206, 1208 and 1209a(b)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Alcohol Treatment:	**Yes** See the Special Notes on p. 3-480.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Immobilization.** 2nd or subsequent off-The vehicle operated by the offender may be immobilized for 18 mos or when they obtain a valid license whichever comes first. This action is discretionary not mandatory. 23 §1213a **Forfeiture.** 3rd or subsequent off-The vehicle operated by the offender may be forfeited This action is discretionary not mandatory. 23 §1213b
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**Special Assessment.** A defendant is assessed a mandatory **$17.50** fee. Twelve dollars and 50 cents ($12.50) of this fee is deposited into an account which is used to assist/compensate victims of crimes. 13 §7282

Other Criminal Actions Related to DWI

Homicide by Vehicle:	
State Has Such a Law:	**Yes** There are two veh homicide laws. The first applies to death caused by motor veh operation in violation of law. 23 §1091(d) The second applies to death caused by DWI. 23 §1210(e) Both of these offenses are felonies and the criminal sanctions for a conviction under either section are the same.
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**1 to 15 yrs Special Note:** These penalties do not foreclose the option of tougher penalties for manslaughter (homicide) convictions. 13 §1 and 23 §§1091(c) & 1210(e)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$10,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	If death is DWI related, a 23 §1210(e) conviction - **Susp**[1]; If death is not DWI related, a 23 §1091(c) conviction - **Susp** 23 §§1206(b), 1210(e) & 1091(c)
Length of Term of Licensing Withdrawal:	If death is DWI related - **1 yr**; If death is not DWI related - **1 yr** plus any other susp period required under the point system. See 23 §§2505 & 2506

[1]Before a defendant's license is reinstated, they must complete an alcohol and driver education program. 23 §§1206(b) and 1209(a)

Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum Length of License Withdrawal:	If death is DWI related - **1 yr**; If death is not DWI related - **1 yr** plus any other susp period required under the point system 23 §§2505 & 2506
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See the Special Note below. See Community Service, Immobilization and Forfeiture under Other on p. 3-483.
Sanction:	
Criminal:	
Imprisonment (Term):	Misd-Not more than **2 yrs**[1] 13 §1 & 23 §674(b) See Footnote No. 2.
Mandatory Minimum Term Imprisonment:	1st off - **48 hrs**[1] (Note: This mand sanction does not apply if (1) the lic susp has "run" and (2) the offender has completed alc. education or treatment or other requirements under 21 §1209a. See the Special Notes under Rehabilitation on p. 3-480.); 2nd off - **96 hrs**[1]; 3rd off - **8 con dys**[1]; 4th and sub off - **16 con dys**[1] 23 §674(b) There can be no community service in lieu of these minimum jail terms. *State v. Baker,* 579 A.2d 479 (Vt. 1990)
Fine ($ Range):	Not more than **$5,000** 23 §674(b) **Surcharge.** In addition to any fine sanction, there is a surcharge of **$50** which is used to fund drunk driving law enforcement. 23 §674(g)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp** 23 §2506
Length of Term of License Withdrawal Action:	(1) 1st off - **30 dys**[1]; 2nd off - **90 dys**[1]; 3rd and 4th offs - **6 mos**[1] (2) Or susp under the point system whichever is greater. 23 §2506
Mandatory Term of License Withdrawal Action:	**None**

[1]Under 23 §674(d), if a person is convicted of both a violation of 23 §674 and DWI (23 §1201), any penalty or susp/rev for these offenses shall be consecutive (not concurrent).
[2]A person commits only a traffic violation, with a fine of not more than $175, if they drive while suspended or revoked but where the period of suspension or revocation has expired. I.e., the offender is eligible for a license but has not applied for reinstatement. 23 §§676(b) & 2302(c)

Special Note: There are several statutory schemes concerned with operating a CMV during either a CDL disqualification or a CDL out-of-service order. I. Under 23 §§674(a) and 677, a person who operates a CMV while disqualified commits a misd and is subject to an imprisonment of not more than 2 yrs and/or a fine of not more than $5,000. II. Under 23 §§4107(b) and 2302(a)(5) & (c), it is a civil traffic violation, with a fine of not more than $175, to operate a CMV while either disqualified or under an out-of-service order. III. Under 23 §4120, notwithstanding any other provision of law, a person, who violates CDL out-of-service order is subject to a penalty of $1,000. IV. Under 23 §4119, a person, who is convicted of violating a CDL out-of-service order is subject to the following CDL disqualification periods: 1st off-90 dys (mand); 2nd off (w/n 10 yrs)-1 yr (mand); and, 3rd or sub off (w/n 10 yrs)-3 yrs (mand). However, the following disqualification periods apply if the out-of-service order conviction was the result of driving a CMV which was either transporting hazardous materials or 15 or more persons: 1st off-180 dys (mand); and, 2nd or sub off (w/n 10 yrs)-3 yrs (mand).

Other Criminal Actions Related to DWI: (continued)

Other:

I. **Community Service:** 1st off - **40 hrs**; 2nd off - **80 hrs**; 3rd off - **120 hrs** These sanctions are in addition to incarceration. 23 §674(b)
II. **Immobilization.** 2nd or subsequent off-The vehicle operated by the offender may be immobilized for 18 mos or when they obtain a valid license whichever comes first. This action is discretionary not mandatory. 23 §674(h)
III. **Forfeiture.** 3rd or subsequent off-The vehicle operated by the offender may be forfeited This action is discretionary not mandatory. 23 §674(h)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** 23 §673a
Grounds for Being Declared an Habitual Offender:	8 or more convictions based on moving violations (with 6 points or more assessed) and DWI offs within 5-yr period
Term of License Rev While Under Habitual Offender Status:	**2 yrs** 23 §673a
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	**None**
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[1] (Year Eff: 1986) 7 §§2(2), 238, 657 & 658
Minimum Age (Years) Possession:	**21**[1] There is an employment exemption. **Special Note:** The law does not specifically prohibit possession or consumption per se but makes illegal the possession of alcoholic beverages by minors for the purpose of consumption. 7 §657
Minimum Age (Years) Consumption:	**21**[1] See the Special Note above. 7 §657
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** 7 §501[2]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No**
Dram Shop Actions-Social Hosts:	**Yes** *Langle v. Kurkul,* 510 A.2d 1301 (Vt. 1986) A social host, who furnishes alcoholic beverages to a visibly intoxicated guest, may be liable to a third person for injuries caused by such guests.[3]
Other:	I. A licensee may be liable for the injuries sustained by an intoxicated patron. *Estate of Kelly v. Moguls, Inc.,* 632 A.2d 360 (Vt. 1993) II. However, a social host is not liable for the injuries sustained by an intoxicated guest. *Langle v. Kurkul,* 510 A.2d 1301 (Vt. 1986) **Comment:** Language by the court in this case seems to indicate that a social host may be liable for the injuries sustained by a minor guest.
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**None** Note: The Vermont Supreme Court has stated that this State "... has no ... statute making it a crime for any person ... to sell or furnish alcoholic beverages to an adult who is visibly intoxicated." *Lange v. Kurkul,* 510 A.2d 1301, 1304 (Vt. 1986)
Term of Imprisonment:	
Fine ($ Range):	
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**No**
Length of Term of License Withdrawal:	

[1]Students, who are under 18 years old and who are enrolled in post secondary education culinary arts program, are exempt from the drinking age limit law. 7 §3

[2]Note: A franchisor may or may not be liable under the dram shop law for the actions of a franchisee. The extent of any liability will depend upon the control exercised by the franchisor over the franchisee. *Carrick v. Franchise Associates, Inc.,* 671 A.2d 1243 (Vt. 1995)

[3]Title 7, §501(g) provides that nothing in the dram shop law shall create a "statutory" cause of action against a social host. This subsection, however, states that it "shall not be construed to limit or otherwise affect the liability of a social host for negligence at common law."

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd**[1&2] 7 §658 & 13 §1
Term of Imprisonment:	**2 yrs** 7 §658
Fine ($ Range):	**$500 to $2,000** 7 §658
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes**[3] **Susp/Rev** 7 §236(a)
Length of Term License Withdrawal:	**Indeterminate** 7 §236(a)
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Drivers only 23 §1134

[1]Under 7 §224(c), "[n]o spirituous liquor shall be sold by a third class licensee to a minor." See 7 §667 for possible sanctions for a violation of 7 §224(c).

[2]A person commits a felony if they sell or furnish alcoholic beverages to a minor, who, as a result of such illegal action, causes either a death or serious bodily injury. Such death or injury can be to either the minor or another person. The sanctions for this offense are incarceration for not more than 5 yrs and/or a fine of not more than $10,000. 7 §658(d) & 13 §1

[3]An "administrative penalty" of not more than $2,500 may be imposed on a licensee in lieu of susp/rev. 7 §236(b)

STATE:	**VIRGINIA**
General Reference:	Code of Virginia Annotated and Virginia Admin. Code (VAC)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §18.2-266
Illegal Per Se Law (BAC/BrAC):	≥**0.08**[1&2] §18.2-266 Persons Under 21 Years Old: ≥**0.02 but <0.08**[2&3] §18.2-266.1(A)
Presumption (BAC/BrAC):	≥**0.08**[2] §18.2-269(A)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**, (2) Any Narcotic Drug, (3) any Self-Administered Intoxicant or Drug of Whatsoever Nature or (4) a Combined Influence of Alcohol and any Drug or Drugs §18.2-266
Other:	For Commercial Motor Vehicle Operators, see p. 3-490.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §18.2-267(a) For CMV operators, see §46.2-341.25.
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §18.2-268.2
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §18.2-268.2
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** But only for rebuttal purposes[4] §18.2-268(O)
Other Information:	**None**

Chemical Tests od Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §18.2-268.2(A)
Urine:	**No**
Other:	**No**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Substance Abuse Screening and Assessment 1st off-Discretionary; 2nd or sub off-**Mandatory** §19.2-299.2(A) (Eff: 7/1/99)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.
[2]Standards: For blood, percent by weight by volume; for breath, grams of alcohol per 210 liters of breath. §§18.2-266, 18.2-266.1(A), 18.2-269(A)(3) & 46.2-391.2
[3]The law makes it an offense for a person under 21 years old to operate a motor vehicle after "illegally consuming alcohol." The law further provides that, if such a person has a BAC/BrAC ≥0.02 but <0.08 while driving, they have committed such an offense. §18.2-266.1(A)
[4]The Virginia Court of Appeals has held, in an *en banc* decision, that it is constitutional under both the Federal and State constitutions to admit evidence of a person's refusal to submit to "field sobriety tests". *Farmer v. Com.*, 404 S.E.2d 371 (Va.App. 1991) Note: This reversed a prior "panel" decision by this same court in *Farmer v. Com.*, 390 S.E.2d 775 (Va.App. 1990).
Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Tench v. Com.*, 462 S.E.2d 922 (Va.App. 1995), and *Jones v. City of Lynchburg*, 474 S.E.2d 863 (Va.App. 1996)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st or subsequent refusal-**Susp-1 yr**[1] (This susp appears to be mandatory.) §18.2-268.4 **Special Note:** There is also a mandatory 7 dy susp under §46.2-391.2.
Other:	See "persons under 18 years old" in Post DWI Conviction Licensing Action on p. 3-489.
Sanctions Following a Conviction for a DWI Offense:	**Important.** See DWI Injury Offenses below.
Criminal Sanctions:	See Double Jeopardy on p. 3-487.
Imprisonment:	
Term (Day, Month, Years, Etc.):	Cl 1 Misd (all offs) 1st off-not more than **12 mos**[2]; 2nd off (w/n 10 yrs)-**1 mo to 1 yr**[2]; 3rd and sub off (w/n 10 yrs)-**2 mos to 1 yr**[2] §§18.2-11(a) & 18.2-270 Offense for Persons Under 21 Years (≥0.02 but <0.08): **None**
Mandatory Minimum Term:	2nd off (w/n 5 yrs)-**48 hrs**[2]; 3rd and sub off (w/n 5 yrs)-**30 dys**[2]; 3rd and subsequent off (w/n 5-10 yrs from 1st)-**10 dys**[2]
Fine:	
Amount ($ Range):	1st off-Not more than **$2,500**[3]; 2nd off (w/n 10 yrs)-**$200 to $2,500**[3]; 3rd and sub off (w/n 10 yrs) -**$500 to $2,500** Offense for Persons Under 21 Years (≥0.02 but <0.08): Not more than **$500** §18.2-266.1(B)
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	**None**

[1]The court may dismiss a refusal susp action if the defendant pleads guilty to a DWI offense. §18.2-268.4
[2]**Special Note:** It may be possible for the court to place a defendant on probation and allow them to serve any period of imprisonment via **electronic home monitoring**. §53.1-131.2
[3]If a person is required to enter the Virginia Alcohol Safety Action Program under §18.2-271.1, they must pay a fee of not less than $250 but not more than $300. §18.2-271.1(a1) See Footnote No. 4 on p. 3-490.

DWI Injury Offenses. It is a Cl 6 felony to unintentionally cause serious bodily injury while in violation of the drunk driving laws where there is evidence of reckless disregard for human life. §18.2-51.4(A) Criminal Sanctions: Imprisonment from **1 to 5 yrs** and/or a fine of not more than **$2,500**. §18.2-10(f) Licensing Sanctions: 1st off-Operating Privileges "Deprived"-**1 yr** An offender is eligible to participate in alcohol education and rehabilitation program. See Footnote No. 1 on p. 3-490. 2nd off (w/n 10 yrs)-**Rev-3 yrs** (appears mand) 3rd and sub off (w/n 10 yrs)-**Rev-Indefinitely** (License may be restored after 10 yrs upon a showing of "good cause".) §§18.2-51.4(B), 46.2-389 and 46.2-391(A) & (B) A prior offense includes any prior drunk driving offense conviction. §18.2-51.4(D)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)
Restitution
(eg Victim's Fund): **Yes** Compensation may be obtained from two sources: (1) A victims' compensation (§19.2-368.1 et seq.); (2) direct compensation by a defendant to a victim. §19.2-305
Laboratory Fee. A DWI offender is required to pay a $100 fee for any forensic laboratory analysis that was performed by the State in connection with the prosecution of the DWI offense. §18.2-264.1
Child Endangerment.[1] A person convicted of a DWI offense, while carrying a person 17 years old or younger, is subject to the following additional sanctions: 1st off-fine of $100 (mand) to $500 and community service of 40 hrs (mand) benefitting children; sub. off-fine of $100 (mand) to $500 and community service of 80 hrs (mand) benefitting children. §18.2-270
EMS/Enforcement Costs. Counties, cities and towns may enact ordinances that make an offender liable in a civil action for the expenses of responding to any DWI offense (e.g., emergency medical or police response costs). Liability is limited to $1,000. §15.1-132.1

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action: See Double Jeopardy on p. 3-487.
Administrative Per Se Law: **Yes** ≥**0.08** BAC/BrAC For Standards, see Footnote No. 2 on p. 3-487. **Susp-7 dys** (mand) §46.2-391.2
Other: **None**

Post DWI Conviction Licensing Action: See Footnote No. 2.
Type of Licensing Action
(Susp/Rev): 1st off-Privilege to operate any motor veh is "**deprived**" (or revoked); 2nd off (w/n 10 yrs)-**Rev**; 3rd or sub off **Rev** §§18.2-271, 46.2-391 & 46.2-394
Offense for Persons Under 21 Years (≥0.02 but <0.08): **Susp** §18.2-266.1(B)

Term of License Withdrawal
(Days, Months, Years, etc.): 1st off-**1 yr**; 2nd off (w/n 10 yrs)-**3 yrs**; 3rd or sub off (w/n 10 yrs)-**10 yrs**[3] (See Footnote No. 3 on p. 3-490.); 4th off-**5 yrs**
Offense for Persons Under 21 Years (≥0.02 but <0.08): **6 mos** (A restricted license may be issued.) §18.2-266.1(B)
Persons under 18 years old: The DWI charge charge is deferred and the following licensing action must be taken-1st off-**1 yr denial** or until the person reaches 17 whichever is the longer susp. period (driving privileges may be restored after 90 dys); 2nd and sub. off-**1 yr denial** until the person reaches 18 whichever is the longer susp. period (1 yr is mand). A restricted hardship lic may be issued to

[1]A drunk driving law offender, who operates a motor vehicle while transporting child <18 yrs old, may be subject to prosecution for child abuse and neglect under §18.2-371.1. See *dicta* in *Com. v. Carter,* 462 S.E.2d 582 (Va.App. 1995).
[2]Subject to the provisions of §§18.2-271 & 18.2-271.1, the licensing agency may revoke a driver's license for a DWI offense under §§46.2-389, 46.2-391 & 46.2-394 as follows: 1st off-1 yr rev; 2nd off (w/n 10 yrs)-3 yr rev; 3rd off (w/n 10 yrs)-10 yr rev (5 yrs mand); 4th off-5 yrs (mand).
[3]After 10 yrs, the license can only be restored "for good cause shown". §46.2-391(B)

Sanctions Following a Conviction for a DWI Offense:
(continued)

	Persons under 18 years old: (continued) a 1st offender. §16.1-278.9 **Special Note:** The above also applies to persons under 18 years old who have refused to submit to a chemical test under the implied consent law.
Mandatory Minimum Term of Withdrawal:	1st off - See Footnote No. 1; 2nd off (w/n 10 yrs) **4 mos**[2]; 3rd or sub off (w/n 10 yrs)-**3 yrs**[3]; 4th off-**5 yrs** Offense for Persons Under 21 Years (≥0.02 but <0.08): **None**
Other:	
Rehabilitation:	
Alcohol Education:	1st off-**Yes**[4]; 2nd off (w/n 10 yrs)-**Yes**[4]; 3rd and sub off - Not eligible to participate in VASAP[4] under §18.2-271.1(A). §18.2-271(C) See Footnote No. 3 below.
Alcohol Treatment:	1st off-**Yes**[4]; 2nd off (w/n 10 yrs)-**Yes**[4]; 3rd and sub off - Not eligible to participate in VASAP[4] under §18.2-271.1(A). §18.2-271(C) See Footnote No. 3 below. Offense for Persons Under 21 Years (≥0.02 but <0.08): An offender is eligible to participate in the State's Alcohol Safety Action Program. §18.2-266.1(B)

[1]A restricted lic. may be issued if the defendant participates in a rehabilitation program. §18.2-271.1(E)
[2]A restricted lic. may be issued after the minimum period of lic. withdrawal (4 mo revocation) has passed and a defendant has participated in a rehabilitation program. §18.2-171.1(E), *Turner v. Com.*, 408 S.E.2d 586 (Va.App. 1991) & *Com. v. Meadows*, 440 S.E.2d 154 (Va.App. 1994) **Important:** See Ignition Interlock on p. 3-491.
[3]For a 3rd off, if a person at the time of the DWI conviction was dependent on alcohol, either (1) their license may be restored after 5 yrs or (2) a restricted license for employment purposes may be issued after 3 yrs provided they have been cured of such dependency and are not otherwise a threat to the public safety. In addition, before either a license is reinstated or a restricted employment license issued, an offender may be required to undergo an alcohol evaluation. Depending upon the recommendations contained in the alcohol evaluation, an offender may not have their driving privileges restored after 5 yrs. Instead, they only may be allowed restricted driving privileges that are not to exceed 5 yrs. Offenders are given credit for any period of license revocation that was imposed under the habitual offender law. §46.2-391(C) **Important:** See Ignition Interlock on p. 3-491.
[4]A 1st or 2nd offender is eligible to participate in the Va Alc Safety Action Prog (VASAP). This program consists of driver awareness training, alcohol and drug education and, if necessary via leave of court, referral to treatment. "Such programs serve a probation, intervention function through offender monitoring and follow-up." §§18.2-271.1 & 18.2-271.2 and 24 VAC 35-20-20 & 35-20-420

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: For blood, percent by weight by volume; for breath, grams of alcohol per 210 liters of breath.), (2) are under the influence of alcohol or any narcotic drug, self-administered intoxicant or other drug or (3) refuse to submit to a chemical test for alcohol or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mandatory). It is a Class 3 Misd. to operate a CMV with a BAC ≥0.04; the sanction for this offense is a fine of not more than $500. It is a Class 1 Misd. to operate a CMV either with a BAC/BrAC ≥0.08 or while under the influence of either alcohol or drugs. The sanctions for this offense are as follows: 1st off-Jail for not more than 12 mos and/or a fine sanction of not more than $2,500; 2nd off (w/n 10 yrs)-Jail from 1 mo to 1 yr and/or a fine of $200 to $2,500. If the 2nd off was w/n 5 yrs of a previous off, there is a mandatory jail sanction of 48 hrs. 3rd off (w/n 10 yrs)-Jail from 2 mos to 1 yr and/or a fine of $500 to $2,5000. A 30 dy jail sentence is mandatory if the 3rd or sub. off occurred w/n 5 yrs and a 10 dy jail sentence is mandatory if the 3rd or sub. off occurred w/n 10 but more than 5 yrs. In addition, a person who operates a CMV with any alcohol in their system commits a traffic infraction (a fine of not more than $200) and must be placed "out-of-service" for 24 hours. §§18.2-11(a) & (c), 18.2-271.1(I), 46.2-113, 46.2-341.4, 46.2-341.17, 46.2-341.18, 46.2-341.24, 46.2-341.25, 46.2-341.26:1 to 46.2-341.26:11, 46.2-341.27, 46.2-341.28, 46.2-341.29 and 46.2-341.31

Sanctions Following a Conviction for a DWI Offense:
(continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **None**

Terms Upon Which Vehicle
Will Be Released: **N/A**

Other: **Registration Suspension.** Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked (e.g., DWI, vehicle homicide, driving while license is either suspended or revoked), shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspended such registration if the person maintains proof of financial responsibility.

Miscellaneous Sanctions
Not Included Elsewhere:

I. **Interdiction Order.** The court may issue an order that prohibits alcoholic beverage licensees from selling such beverages to a person who has been convicted of a DWI offense. §4.1-333 Generally, such a person is also prohibited from possessing alcoholic beverages. §4.1-322

II. See **Civil Damages** on p. 3-492.

III. **Ignition Interlock.** The court may require a DWI offender, who has been granted restricted driving privileges, to only operate motor vehicles (with the possible exception of vehicles used in the course of employment) that are equipped with ignition interlock devices. §§18.2-270.1, 18.2-270.2, 46.2-360 & 46.2-391 (2) Mandatory Ignition Interlock Usage (Eff: 7/1/99). A 2nd or subsequent offender (w/n 5 yrs), who is required to participate in either a VASAP or treatment program as a result of an assessment that indicates that they have a substance abuse problem, can obtain restricted driving privileges only if they operate motor vehicles that are equipped with ignition interlock devices. This requirement shall not exceed the length of such program or for the duration of the license susp/rev period whichever is shorter. §18.2-271.3(A)

IV. **Points.** A person, who has either been convicted of a drunk driving offense or, if under 21 yrs old, found in violation of driving after "illegally consuming alcohol", has 6 points assigned to their driving record. §46.2-492(D)(1)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **Yes** Death related DWI offense (involuntary manslaughter-death caused unintentionally via DWI) Class 5 Felony §18.2-36.1

Sanctions:
Criminal Sanction:
Imprisonment (Term): **1 to 10 yrs**[1&2] §18.2-10(e)
Mandatory Minimum Term: **None**[2]
Fine ($ Range): **None**[1]

[1]**Alternative Sentence:** Jail for not more than 12 mos and/or pay a fine of not more than $2,500. §18.2-10(e)
[2]If the defendant's conduct indicated a "reckless disregard for human life", they are guilty of aggravated involuntary manslaughter and are subject to an imprisonment term of 1 yr (mand) to 20 yrs. §18.2-36.1(B)

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine:	**N/A**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev**[1] §46.2-389
Length of Term of Licensing Withdrawal:	**1 yr**[1] §46.2-389
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr** §46.2-389
Other:	I. See "Registration Suspension" under DWI Vehicle Impoundment/Confiscation on p. 3-491. II. **Civil Damages.** Exemplary damages may be awarded in a civil action, involving either a death or injury related drunk driving offense, provided either that the defendant acted with malice towards the plaintiff or that the defendant's conduct showed a willful or wanton disregard for the rights of others.[2] §8.01-44.5

Driving While License Suspended or Revoked Where the Basis Was a DWI Off*:	See Footnote No.3.
Sanction:	
Criminal:	
Imprisonment (Term):	1st off (Cl 2 Misd)-Not more than **6 mos**; 2nd and sub offs (Cl 1 Misd)-Not more than **12 mos** §§18.2-11 & 46.2-301 See Footnote No. 4 and Special Note below.
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	1st off-Not more than **$1,000**; 2nd and sub offs-Not more than **$2,500**
Mandatory Minimum Fine:	**None**

[1]A defendant's license can also be suspended for not more than 5 yrs. §18.2-36.1(C)
[2]Willful or wanton behavior can be shown by proving the following: Either (1) when the incident occurred, the defendant's BAC was ≥0.15, they consumed alcoholic beverages knowing that they were going to operate a motor vehicle and their intoxication was the proximate cause of an injury or a death or (2) the person unreasonably refused to submit to a chemical test and the incident occurred while they were intoxicated, they knew that they were going to operate a motor vehicle and the intoxication was the proximate cause of the injury or death. §8.01-44.5
[3]A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. Except as noted below for out-of-service violations, the fine and imprisonment sanctions for these offenses are as given above for driving while suspended or revoked. The following fine and licensing sanctions are imposed in cases concerning out-of service order violations: (1) The fine sanction is $1,000 to $2,500 and (2) the licensing sanctions are, for a 1st violation, CDL disqualification for 180 dys (mand) and, for a subsequent violation (w/n 10 yrs), CDL disqualification for 3 yrs. §46.2-341.21
[4]Violations that authorize susp/rev for 30 dys or more.

Special Note: Under separate provisions of the State's criminal code, it is a Class 1 Misd for a person to operate a motor vehicle when their privilege to do so has been "forfeited". §18.2-272.

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Rev** or **Susp** §46.2-301 See Footnote No. 1.
Length of Term of License Withdrawal Action:	An additional susp/rev for the same period for which the license has been previously suspended or revoked; if the original period was not specified, then the additional susp or rev is not to exceed 90 dys. Under §46.2-394, for a 4th offense, the lic. is revoked for 5 yrs.
Mandatory Term of License Withdrawal Action:	Same as above.
	Special Note: I. Vehicles owned by an offender may be impounded or immobilized for up to 90 dys even if such vehicles were not used in the offense. §46.2-301(A) II. The following sanction also may be imposed if the original licensing action was for either (1) a drunk driving offense, (2) an admin. per se violation, (3) a refusal to submit to a chemical test under the implied consent law or (4) driving after adjudication as an habitual offender (where such adjudication was based either in whole or in part on alcohol related offenses). Any vehicle (with the exception of rented or leased vehicles) used in the offense may be impounded or immobilized for 30 dys. The owner of the vehicle may obtain a release from this action based upon a showing that it is the only vehicle that they own and that the impoundment or immobilization of the vehicle would cause a substantial hardship. §46.2-301.1(A) Note: A person is not subjected to double jeopardy if they are prosecuted for driving on either a suspended or revoked license after the vehicle they were driving was impounded under §46.2-301.1. *Wilson v. Com.*, 477 S.E.2d 765 (Va.App. 1996)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §§46.2-351 et seq.
Grounds for Being Declared an Habitual Offender:	Either (1) any 3 or a combination of 3 of the following offs: DWI (including DWI injury offenses), manslaughter via vehicle, driving while suspended or revoked, a felony under the motor vehicle laws, failure to stop at an accident or swearing false information or (2) 12 or more violations which either require or authorize either a suspension or a revocation of 30 dys or more or includes those offenses listed in (1).

[1]**Registration Suspension.** Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked, shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspended such registration if the person maintains proof of financial responsibility.

Other Criminal Actions Related to DWI: (continued)

Term of License Rev While Under Habitual Offender Status:	**10 yrs**[1] §46.2-356 See Footnote No. 2.
Type of Criminal Off if Convicted on Charges of Driving While on Habitual Offender Status:	1st off: **Misd** If driving did not endanger life, limb or property of another. **Felony** If driving either (1) did endanger life, limb or property of another or (2) takes place while the offender was in violation of the DWI laws (irrespective of whether life, limb or property was endangered). 2nd or sub off: **Felony** Driving irrespective of whether their was endangerment of life, limb or property of another. §§18.2-8 & 46.2-357
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**Misd**-Not more than **90 dys** **Felony-1 to 5 yrs** §46.2-357(B)(1) & (2)
Mandatory Minimum Term of Imprisonment:	**Misd-None** **Felony-1 yr**[3] §46.2-357(B)(2)
Fine ($ Range):	**Misd**-Not more than **$2,500** §46.2-357(B)(1) **Felony-None**

[1]The license may be restored in less than 10 yrs under several conditions. (1) Except as provided in (3), (4) and (5), after 5 yrs, a license may be restored (with or without restrictions) provided the offender's driving behavior will no longer constitute a threat to the safety and welfare of themselves or others. (2) For persons over 18 years old, if the one of the offenses occurred when the driver was under 18, a license may be issued (with or without restrictions) and without a waiting period. (3) If one the offenses was a DWI and the offender was addicted to alcohol, a license may be restored (with or without restrictions) after 5 yrs (or after 3 yrs, a restricted license may be issued for the purpose of driving to and from a place of employment or in the course of employment) provided the driver is no longer alcohol dependent and would not otherwise constitute a threat to the public's safety when operating a motor vehicle. In the computation of the 3 yr and 5 yr revocation periods, the offender is given credit for any period of time their license was revoked for a DWI offense. An offender may be required to undergo an alcohol evaluation before either license restoration or the issuance of restricted driving privileges. Depending upon the recommendations contained in the alcohol evaluation, an offender may not have driving privileges restored after 5 yrs. Instead, they only may be allowed restricted driving privileges that are not to exceed 5 yrs. (4) Except in situations where a DWI offense was involved, if one of the offenses concerned driving while susp or rev related to either failure to pay fines or costs, failure to furnish proof of financial responsibility or failure to satisfy a judgment, the license may be restored after 3 yrs. If DWI a offense is involved, license restoration is via (3) above. (5) If all of the offenses are related to driving while suspended or revoked based on either a failure to pay fines or costs, failure to furnish proof of financial responsibility or failure to satisfy a judgment, the license may be restored at any time after these costs, fines, judgments or failures are satisfied. §§46.2-358, 46.2-359, 46.2-360 & 46.2-361

[2]**Registration Suspension.** Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked, shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspended such registration if the person maintains proof of financial responsibility.

[3]A person, who has been convicted of a felony offense, may be eligible to participate in an alternative sanction program which includes probation. This alternative may include "boot camp," detention center or diversion center incarceration programs. §46.2-357(D)

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**
	Important. See the Special Note concerning vehicle impoundment or immobilization on p. 3-493.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1987) §§4.1-304 & 4.1-305
Minimum Age (Years) Possession:	**21** A special exemption to minors, for employment reasons, and at he order of a parent. §4.1-305
Minimum Age (Years) Consumption:	**None**
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** For a case denying liability, see *Williamson v. Old Brogue, Inc.*, 350 S.E.2d 621 (Va. 1986)[1]
Dram Shop Actions-Social Hosts:	**No** (No Cases)
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Class 1 Misd** §§4.1-304, 18.2-11(a) & 18.2-12
Term of Imprisonment:	No more than **12 mos**
Fine ($ Range):	Not more than **$2,500**

[1]For other cases denying liability under Virginia law, see *Webb v. Blackie's House of Beef, Inc.*, 811 F.2d 840 (4th Cir. 1987), *Corrigan v. U.S.*, 815 F.2d 954 (4th Cir. 1987) (cert. den., 484 U.S. 926), and *Byrd v. Gate Petroleum*, 845 F.2d 86 (4th Cir. 1988).

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev or susp**[1&2] §§4.1-225(a)(k)
Length of Term of License Withdrawal:	Time period is not specified in the statute.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Class 1 Misd** §§4.1-304, 18.2-11(a) & 18.2-12
Term of Imprisonment:	Not more than **12 mos**
Fine ($ Range):	Not more than **$2,500**
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes Rev or susp**[1&2] §§4.1-225(a)(k)
Length of Term License Withdrawal:	Time period not specified in the statute.
Anti-Happy Hour Laws/Regulations:	**Yes** VR 125.01-5, §16 (regulation)
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Drivers only §18.2-323.1

[1]Note: Either in addition or in lieu of suspending a license, a civil fine may be imposed as follows: 1st off-Not more than $1,000; 2nd off-Not more than $2,500; and, 3rd off-Not more than $5,000. §4.1-227(B) Also, under separate provisions, a licensee may agree to an "offer in compromise" wherein they will not be subject to license suspension or revocation if they agree pay a sum not to exceed $5,000. §4.1-227(C)

[2]This administrative action is base on "reasonable cause to believe" that the licensee has sold alcoholic beverages to a minor or an intoxicated person. I.e., a conviction for a violation of the law prohibiting such sales does not appear necessary. §4.1-225

JURISDICTION:	**VIRGIN ISLANDS**
General Reference:	Virgin Islands Code (Updated through 1994)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an intoxicating liquor 20 §493(a)(1)
Illegal Per Se Law (BAC):	≥**0.10**[1] 20 §493(a)(2)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **A Controlled Substance** or (2) a Combination of Intoxicating Liquor and a Controlled Substance 20 §493(a)(1)
Other:	A BAC ≥**0.10**[1] is *prima facie* evidence that a person is under the influence of an intoxicating liquor 20 §493a(a)(3).

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** 20 §493c(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** 20 §493c(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) 20 §493c(g)
Other Information:	**None**

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** 20 §493c(a)
Urine:	**Yes** 20 §493c(a)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	
Anti-Plea Bargaining Statute (Yes/No):	
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol Screening (Not mandatory) 20 §493(b)

Sanction for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Suspension/Revocation):	**N/A**
Other:	

[1]Standard: Percent by weight of alcohol in the blood. 20 §§493(a)(2) & 493a(a)(3)

Sanction for Refusal to Submit to a Chemical Test: (continued)

Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Suspension/Revocation):	**Susp 90 dys** (Appears to be mandatory.) 20 §493c(e)(2)(B)
Other:	

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 1.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off-Misd-Not more than **1 yr**; sub. off (w/n 10 yrs)-Felony-**48 con hrs to 2 yrs** 14 §2(b)(1), 20 §493(b) & 20 §544(b)
Mandatory Minimum Term:	1st off-**None**; sub. off (w/n 10 yrs)-**48 con hrs** See Community Service below.
Fine:	
Amount ($ Range):	1st off-Not less than **$300** If there has been an accident-Not less than **$500**; sub. off (w/n 10 yrs)-Not more than **$2,000** If there has been an accident-**$600** 20 §§493(b) & 544(b)
Mandatory Min. Fine ($):	1st off-**$300** If there has been an accident-**$500**; sub. off-**None** if there has been an accident-**$600** 20 §493(b)
Other Penalties:	
Community Service:	For a sub. off (w/n 10 yrs)-**10 dys** of community service in lieu of the 48 con hrs of imprisonment. 20 §493(b)(2).
Restitution (eg Victim's Fund):	**Yes**[2] Under 5 §3711(c)(2) & 5 §3721, a defendant may be required to pay restitution to a victim as a condition of probation or as an order joined with sentence. Note: This requirement applies to persons convicted of any criminal offense.
Other:	
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	**Yes**[3] If the court finds, at the initial appearance, by a preponderance of the evidence that a person has been driving with a BAC that constitutes *prima facie* evidence of driving while under the influence (i.e., a BAC ≥**0.10**), it suspends the driver's license for **90 days**. This suspension action appears to be mandatory. 20 §493c(e)(2)

[1]Under 20 §550, the following sanctions apply to persons under 18 years old who are convicted of any violation of law related to motor vehicle use or operation (e.g., a DWI offense): Jail-**None**; fine-not more than **$100**; licensing action-**revocation** for such period as fixed by the court; Miscellaneous-**Impoundment** of the vehicle used in the offense for not more than **60 dys**.
[2]If the court does not order restitution, it must, nevertheless, require a defendant to pay a fee (surcharge) for court administrative expenses. This fee is to equal 5 percent of the restitution amount. 5 §3721
[3]Note: The police do not "pick-up" the license at the time of the DWI arrest.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:	See Footnote No. 1 on p. 3-498.
Type of Licensing Action (Suspension/Revocation):	**Susp/Rev**[1&2] 20 §493(c)
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**6 mos**; sub. off-**1 to 5 yrs**
Mandatory Minimum Term of Withdrawal:	1st off-**30 dys**[3]; sub. off (w/n 10 yrs)-**1 yr** (Appears to be mandatory.)
Other:	
Rehabilitation:	
Alcohol Education:	For all DWI offense convictions, the court must order a defendant to participate in either a substance abuse education or treatment program. 20 §493(d)
Alcohol Treatment:	See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Impoundment (Limited)** See Footnote No. 1 on p. 3-498. Note: For failure to appear in court on a DWI charge, a person's vehicle may be impounded for such time as the court thinks proper. 20 §544(c)
Terms Upon Which Vehicle Will Be Released:	
Other:	
Miscellaneous Sanctions Not Included Elsewhere:	

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
Jurisdiction Has Such a Law:	**Yes**[4] **Felony** 14 §2(b)(1) & 20 §504
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **5 yrs** 20 §504
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$1,000** 20 §504
Mandatory Minimum Fine:	**None**

[1]Either suspension or revocation for the periods indicated.
[2]Under 20 §546, the court can also revoke a driver's license for either a permanent or a temporary period as determined proper by the court.
[3]After this 30 day period, a restricted license may be issued. This license may only be used to "operate a motor vehicle to or from [a person's] place of employment or in the course of [a person's] employment." 20 §493(c)(1)(C)
[4]Negligent homicide by motor vehicle where the driver either (1) was under the influence of alcohol, (2) was affected by alcohol, (3) was affected by narcotic drugs or (4) operated a vehicle in a reckless manner.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:
Licensing Authorized and Type of Action:
Length of Term of Licensing Withdrawal:

Rev 20 §546

The court may revoke a driver's license either permanently or for a temporary period as determined proper by the court.

Mandatory Action--Minimum Length of License Withdrawal:

The above revocation is not mandatory.

Other:

See Restitution for a DWI offense on p. 3-498.

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:

Sanction:
Criminal:
Imprisonment (Term):

Note: There is no specific offense for driving while license is either suspended or revoked. However, it is an offense to operate a motor vehicle without having a valid license. A person, who has been convicted of this offense, is subject to a jail term of not more than 6 mos, a fine of not more than $200 and license revocation. The court can revoke a driver's license either permanently or for a temporary period as determined proper by the court. 20 §§371, 544(f) & 546

Mandatory Minimum Term of Imprisonment:
Fine ($ Range):
Mandatory Minimum Fine:
Administrative Licensing Actions:
Type of Licensing Action (Suspension/Revocation):
Length of Term of License Withdrawal Action:
Mandatory Term of License Withdrawal Action:
Other:

Habitual Traffic Offender Law:

Jurisdiction Has Such a Law (Yes/No):

No Note: This jurisdiction does not have a per se habitual traffic offender law. However, the licensing authority may revoke or suspend a driver's license where such driver is "guilty of habitual and persistent violations" of the traffic laws. 20 §548(a)

Grounds for Being Declared an Habitual Offender:

Term of License Revocation While Under Habitual Offender Status:

Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** (Limited) 20 §493c(m)
BAC Chemical Test Is Given to the Following Persons:	
Driver:	**Yes** A blood sample must be taken w/n 4 hrs of death. The information obtained from the sample may only be used for statistical purposes. Note: Statistical reports generated from this data are not public records. 20 §493c(m)
Vehicle Passengers:	**No**
Pedestrian:	**No**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	See the Special Note below.
Minimum Age (Years) Possession:	
None	
Minimum Age (Years) Consumption:	**None**
Dram Shop Laws and Related Legal Actions:	
Jurisdiction Has A Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the Case (Case Citation):	n.a.
Dram Shop Actions-Social Hosts:	n.a.
Other:	

Special Note: The law prohibits persons under 18 years old form entering any night club, dance hall or bar after 9:00 p.m. where alcoholic beverages are being served unless (1) they are accompanied by adults who are legally responsible for the minors or (2) they are attending a school function where alcoholic beverages are not being sold. 14 §485 **Comment:** The general prohibition against selling alcoholic beverages (either in closed containers (packages) or by the drink) to persons under 18 years old was replaced by the present law.

Other Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**None**
Term of Imprisonment:	
Fine ($ Range):	
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**None**
Length of Term of License Withdrawal:	
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	See the Special Note below.
Type of Criminal Action:	
Term of Imprisonment:	
Fine ($ Range):	
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	See the Special Note below.
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	
Length of Term License Withdrawal:	
Anti-Happy Hour Laws/Regulations:	
No	
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**No**

Special Note: It is a misdemeanor for a licensee to allow persons under 18 years old to enter their establishments in violation of 14 §485. See the Special Note on p. 3-501. The sanctions for this offense are a jail sentence of not more than 30 dys and/or a fine of $25 to $500 for each minor found on the premises. The minimum fine amount appears to be mandatory. In addition, for a 2nd or subsequent offense, the licensee is subject to having their alcoholic beverage permit suspended, revoked or denied. The law does not specify the length of such action.

STATE:	**WASHINGTON**
General Reference:	Revised Code of Washington Annotated

Basis for a DWI Charge:

Standard DWI Offense*:	Under the influence of or affected by intoxicating liquor[1] §§46.61.502(1)(b) & 46.61.504(1)(b)
Illegal Per Se Law (BAC/BrAC)*:	≥**0.08**[1,2&3] §§46.61.502(1)(a) & 46.61.504(1)(a) Persons Under 21 Years Old-≥**0.02 but <0.08**[3] §46.61.503 See the Special Note on p. 3-506.
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol*:	Under the influence of or affected by (1) **Any Drug** or (2) a Combination of Intoxicating Liquor and Any Drug[1] §§46.61.502(1)(b) & (c) & 46.61.504(1)(b) & (c)
Other:	For Commercial Motor Vehicle Operators, see p. 3-510. See the Special Note below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[4] §46.20.308
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §46.20.308(1) See Footnote No. 1 on p. 3-504.
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §46.61.517[5]

[1]In a case based on the State's drunk driving law for an offense committed on a Federal military reservation, a Federal appellate court has held that the State law did not apply to the operation of mopeds although it did apply to the operation of bicycles. *U.S. v. Dotson,* 34 F.3d 882 (9th Cir. 1994)

[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

[3]Alc. concentration means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §46.04.015

[4]Under §46.20.308(1), a law enforcement officer may request a person under 21 years old to submit to an implied consent test if officer has arrested and has "reasonable grounds to believe" that the young person was operating a motor vehicle with an alcohol concentration ≥0.02 but <0.08 under §46.61.503.

[5]In *State v. Zwicker,* 713 P.2d 1101 (Wash. 1986), the court limited such evidence to situations where the defendant initially raises the issue of a blood alcohol test by contesting the credibility or competence of police procedures.

[6]Under §46.20.308(3), a person arrested for a DWI offense may be compelled to submit to a test for drugs as well as for alcohol if the offense involved an accident in which there was a serious bodily injury to another person.

Special Note: A person under 21 years old, unless in the presence of a parent or guardian, commits an offense if they occupy a motor vehicle in a public place "while exhibiting the effects of having consumed liquor." The sanctions for a 1st offense are a jail term of not more than 2 months and/or a fine of not more than $500. The sanction for a 2nd offense is a jail term for not more than 6 months. The sanction for a 3rd or subsequent offense is a jail term for not more than 1 year. If the offender is under 18 yrs old, for a 1st offense, their driving privileges are revoked for 1 yr (90 dys mand) and, for a 2nd or subsequent offense, their driving privileges are revoked for 2 yrs (1 yr mand). §§13.40.020(14), 13.40.265, 46.20.265, 66.44.180, 66.44.270(2)(b) & 66.44.365 **Comment:** There is no licensing sanction for this offense if the offender is over 18 but under 21 yrs old. In addition, there appears to be no fine sanction for a 2nd or subsequent offense.

*The law defines a drunk driving offense as either driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug. The law further provides that this offense is established (or proven) if a person either (1) has a BAC/BrAC ≥0.08 w/n 2 hrs of driving or being in actual physical control of a motor vehicle, (2) was under the influence of or affected by intoxicating liquor or drugs while driving or being in actual has physical control of a motor vehicle or (3) was under the combined influence of or affected by intoxicating liquor or any drug while driving or being in actual physical control of a motor vehicle. §§46.61.502(1) & 46.61.504(1) and *State v. Crediford,* 927 P.2d 1129 (Wash. 1996), & *City of Seattle v. Norby,* 945 P.2d 269 (Wash.App. 1997)

Chemical Breath Tests for Alcohol Concentration:
(continued)

Other Information:	A person may be administered either a breath or blood test without their consent, if they have been arrested for either (1) vehicle homicide, (2) vehicle assault or (3) any DWI offense related to an accident where there was a serious bodily injury. §46.20.308(3)[6] & *State v. Schulze,* 804 P.2d 566 (Wash. 1991)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes-Limited**[1]
Urine:	**No**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**[2]
Anti-Plea Bargaining Statute (Yes/No):	**No**[2]
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol evaluation is mandatory. §46.61.5056(2)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal-**Rev/Denial 1 yr** (mand)[3]; 2nd or subsequent refusal[4] (w/n 7 yrs)-**Rev/Denial 2 yrs** or until the person reaches 21 yrs old whichever is longer (mand)[3] §§46.20.308 & 46.20.3101

[1]The implied consent law provides for a blood test only in situations where a person was been arrested for either (1) vehicle homicide, (2) vehicle assault or (3) a DWI offense and where there the offense involved an accident in which there was a serious bodily injury to another person. §46.20.308(3)

[2]The State has a deferred prosecution program for DWI offenses. A person is eligible for this program only once. The program provides for alcohol treatment for a two year period. Upon successful completion of the program, the court shall dismiss the charges pending against the defendant. §10.05.010 et seq. The offender's license is placed on probationary status for 5 yrs. §10.05.060 In addition, as a condition for granting deferred prosecution, the court may require an offender to only operate vehicles that are equipped with ignition interlock devices. §10.05.140 Note: A deferred prosecution is treated as a prior offense for purposed of sanction enhancement for subsequent offenses. §10.05.120

[3]Sec. 46.20.391, concerning the issuance of occupational driving privileges, applies only to situations where licensing action is based on traffic offense convictions. **Comment.** It would appear, therefore, that such provisions do not apply to licensing actions under the implied consent law.

[4]Or a 1st refusal where there has been one or more previous admin. per se violations w/n 5 yrs.

Sanctions for Refusal to Submit to a Chemical Test: (continued)

Other: In situations, involving 2nd or subsequent refusals (or a 1st refusal where there has been one or more previous admin. per se violations w/n 5 yrs) where the person has also been convicted of a drunk driving offense related to the same incident, the revocation/denial for the refusal is to run consecutively to any licensing action that may be imposed for the DWI offense. §46.20.3101

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: A DWI offense is a gross misd. §§46.61.502(5) & .504(5)
On p. 3-507, see Negligent Driving and the Special Note for certain sanctions that apply to persons under 21 yrs old.

Imprisonment: See Footnote No. 2 on p. 3-504.

Term (Day, Month, Years, Etc.):

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**1 dy to 1 yr** §46.61.5055(1)(a)
II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**2 dys to 1 yr** §46.61.5055(1)(b)
III. An offense where there has been a prior offense[1] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**30 dys to 1 yr** §46.61.5055(2)(a)
IV. An offense where there has been a prior offense[1] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**45 dys to 1 yr** §46.61.5055(2)(b)
V. An offense where there has been two or more prior offenses[1] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**90 dys to 1 yr** §46.61.5055(3)(a)
VI. An offense where there has been two or more prior offenses[1] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**120 dys to 1 yr** §46.61.5055(3)(b)
Veh Assault (Drunk driving related injury Cl B felony) - Not more than **10 yrs**[3] §§9A.20.021(1)(b) & 46.61.522
Important. See Mandatory Probation and Miscellaneous Sanctions on p. 3-511.

Mandatory Minimum Term: I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**24 con hrs**[2] or, as an alternative, not less than **15 dys of electronic home monitoring** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(1)(a)

[1]A prior offense includes any type of prior drunk driving offense. §46.61.5055(8)
[2]May be suspended only if jail would impose a risk to defendant's physical or mental well-being.
[3]Under the sentencing guidelines grid, the presumptive sentence is 3 to 84 mos. §§9.94A.310(1) & 9.94A.320

Sanctions Following a Conviction for a DWI Offense:
(continued)

II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**2 con dys**[1] or, as an alternative, **not less than 30 dys of electronic home monitoring** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(1)(b)
III. An offense where there has been a prior offense[2] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**30 dys**[1] and **60 dys of electronic home monitoring** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(2)(a)
IV. An offense where there has been a prior offense[2] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**45 dys**[1] and **90 dys of electronic home monitoring** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(2)(b)
V. An offense where there has been two or more prior offenses[2] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**90 dys**[1] and **120 dys of electronic home monitoring** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(3)(a)
VI. An offense where there has been two or more prior offenses[2] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**120 dys**[1] and **150 dys of electronic home monitoring** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(3)(b)

Fine:
Amount ($ Range):

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**$350 to $5,000** §46.61.5055(1)(a)
II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**$500 to $5,000** §46.61.5055(1)(b)
III. An offense where there has been a prior offense[2] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**$500 to $5,000** §46.61.5055(2)(a)
IV. An offense where there has been a prior offense[2] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**$750 to $5,000** §46.61.5055(2)(b)

[1]May be suspended only if jail would impose a risk to defendant's physical or mental well-being.
[2]A prior offense includes any type of prior drunk driving offense. §46.61.5055(8)

Sanctions Following a Conviction for a DWI Offense:
(continued)

V. An offense where there has been two or more prior offenses[1] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**$1,000 to $5,000** §46.61.5055(3)(a)
VI. An offense where there has been two or more prior offenses[1] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**$1,500 to $5,000** §46.61.5055(3)(b)
Veh Assault (Drunk Driving related injury Cl B felony) - Not more than **$20,000** §9A.20.021(1)(b)

Mandatory Min. Fine ($):

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**$350**[2] §46.61.5055(1)(a)
II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**$500**[2] §46.61.5055(1)(b)
III. An offense where there has been a prior offense[1] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**$500**[2] §46.61.5055(2)(a)
IV. An offense where there has been a prior offense[1] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**$750**[2] §46.61.5055(2)(b)
V. An offense where there has been two or more prior offenses[1] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**$1,000**[2] §46.61.5055(3)(a)
VI. An offense where there has been two or more prior offenses[2] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**$1,500**[2] §46.61.5055(3)(b)

Other Penalties:
Community Service: Possible for any offense §9.94A.101 et seq.
Restitution
(eg Victim's Fund) **Yes**[3] Payment via a State compensation fund. §7.68.010 et seq.

[1]A prior offense includes any type of prior drunk driving offense.
[2]Unless the defendant is indigent.
[3]Also, the court may order the defendant to pay direct compensation to a victim. For felony offenses (e.g., Vehicle Assault), the court, except in unusual circumstances, must order a defendant to pay restitution directly to a victim. §§9.94A.120(15), 9.94A.140 & 9.94A.142

Negligent Driving. A person commits 1st Degree Negligent Driving, a misdemeanor, if (1) they operate a motor vehicle in a negligent manner likely to endanger persons or property and (2) they exhibit the effects of having consumed alcohol or an illegal drug. It is a defense to this offense if the person had a valid prescription for the drug consumed. The sanctions for this offense are a jail term of not more than 90 dys and/or a fine of not more than $1,000. In addition, there is a mandatory penalty assessment of **$250**. §§7.68.035(1)(a) & (2) 9A.20.010(2), 9A.20.021(3), 46.61.050 and 46.61.5249

Special Note: A person <21 yrs old commits a misdemeanor if they operate a motor vehicle with a BAC/BrAC ≥0.02 but <0.08. §46.61.503 The sanctions for this offense are an imprisonment term of not more than 90 dys and/or a fine of not more than $1,000. §§9A.04.040(2), 9A.20.021(3) & 46.64.050

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Ignition Interlock. After the license suspension or revocation period, an offender is restricted to driving vehicles that are equipped with an ignition interlock. 1st offense (BAC <0.15): The restriction period is established by the court. 1st offense (BAC ≥0.15) or any subsequent drunk driving offense (w/n 7 yrs): If there has been no previous restrictions, the restriction period is not less than 1 yr; if there has been 1 previous restriction, the restriction period is not less than 5 yrs; and, if there has been 2 previous restrictions, a restriction period of not less than 10 yrs. §46.20.720

Penalty Assessment. A defendant, who convicted of drunk driving offense under §46.61.502 or 46.61.504, is required to pay an assessment of **$500** which is used to support the victim's compensation fund. Note: There is an assessment of **$250** for a 1st or sub misd and **$500** for a 1st or sub gross misd or felony. For juvenile offenders, there is an assessment of **$75** for a 1st or sub misd and **$100** for a 1st or sub gross misd or felony. §7.68.035(1)(a) & (b) and (2)

Laboratory Assessment Fee. An offender is assessed a **$125** fee which is used to fund the State's toxicology laboratory. The court may suspended this fee if the defendant does not have the ability to pay it. §46.61.5054

Safety and Education Assessment. A defendant must pay an assessment equal to 60 percent of the fine imposed for the purpose of funding safety and education programs. §3.62.090(1)

Incarceration Costs. A defendant (except an indigent) may be required to pay not more than **$50** for each day of incarceration. §10.64.130

EMS Cost. A defendant is liable for up to **$1,000** of the cost of an emergency response related to the DWI offense. §38.52.430

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Yes ≥0.08 BAC/BrAC (See Footnote No. 3 on p. 3-503.) 1st Violation-**Susp-90 dys** (30 dys mand An occupational driver's license may be issued after this mand period.); 2nd or Subsequent Violation (w/n 7 yrs)-**Rev/Denial-2 yrs**[1] (mand) §§46.20.308, 46.20.355(2), 46.20.391(1) & 46.20.3101

Persons Under 21 Years Old-**≥0.02 but <0.08 BAC/BrAC** (See Footnote No. 3 on p. 3-503.)-1st Violation-**Susp 90 dys** (30 dys mand An occupational driver's license may be issued after this mand period.); 2nd or Subsequent Violation (w/n 7 yrs)-**Rev/Denial 1 yr** or until the person reaches 21 whichever is longer. This revocation appears to be mandatory. §§46.20.308, 46.20.391(1) & 46.20.3101

[1]Aministrative licensing action may be stayed from 45 to 90 dys if the offender is participating in a deferred prosecution treatment program. §46.20.308(10)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Under §§46.20.291(1)(a) & 46.20.311(1), a person's license may be susp for not more than 1 yr if they have "committed" an off that requires mandatory license rev (e.g., 2nd or sub DWI offs). The law does not specifically state that such action can be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:

See the Special Note below.

Type of Licensing Action (Susp/Rev):

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**Susp** §46.61.5055(1)(a)
II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**Rev** §46.61.5055(1)(b)
III. An offense where there has been a prior offense[1] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**Rev** §46.61.5055(2)(a)
IV. An offense where there has been a prior offense[1] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**Rev** §46.61.5055(2)(b)
V. An offense where there has been two or more prior offenses[1] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**Rev** §46.61.5055(3)(a)
VI. An offense where there has been two or more prior offenses[1] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**Rev** §46.61.5055(3)(b)
Veh Assault-**Rev** §§46.04.480 & 46.20.285

Term of License Withdrawal (Days, Months, Years, etc.):

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**90 dys** §46.61.5055(1)(a)
II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**1 yr** §46.61.5055(1)(b)
III. An offense where there has been a prior offense[1] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**2 yrs** §46.61.5055(2)(a)
IV. An offense where there has been a prior offense[1] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a

[1]A prior offense includes any type of prior drunk driving offense.
[2]The revocation is "tolled" during any period of incarceration. §46.20.285
Special Note: A DWI offender's driving privileges cannot be reinstated until they have enrolled in and are participating in an approved alcoholism treatment program. §46.20.311

Sanctions Following a Conviction for a DWI Offense:
(continued)

IV. (continued) a refusal to submit to the implied consent test-**900 dys** §46.61.5055(2)(b)
V. An offense where there has been two or more prior offenses[1] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**2 yrs** §46.61.5055(3)(a)
VI. An offense where there has been two or more prior offenses[1] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**3 yrs** §46.61.5055(3)(b)
Veh Assault-**1 yr**[2] §§46.04.480 & 46.20.285

Mandatory Minimum Term of Withdrawal:

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**30 dys**[3] §§46.20.391 & 46.61.5055(1)(a)
II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**30 dys**[3] §§46.20.391 & 46.61.5055(1)(b)
III. An offense where there has been a prior offense[1] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**2 yrs**[4] §46.61.5055(2)(a)
IV. An offense where there has been a prior offense[1] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**900 dys**[4] §46.61.5055(2)(b)
V. An offense where there has been two or more prior offenses[1] w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**2 yrs**[4] §46.61.5055(3)(a)
VI. An offense where there has been two or more prior offenses[1] w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**3 yrs**[4] §46.61.5055(3)(b)
Veh Assault-**1 yr**[2] §§46.04.480 & 46.20.285

[1]A prior offense includes any type of prior drunk driving offense. §46.61.5055(8)
[2]The revocation is "tolled" during any period of incarceration. §46.20.285
[3]Under §46.20.391(1), a 1st offender is eligible for occupational driving privileges after 30 dys.
[4]An offender is not eligible for an occupational license. §46.20.391(2)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of alcohol or any drug or (3) refuse to submit to a chemical test for alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). Note: The implied consent provisions for CMV operators allows testing for either alcohol or drugs; however, the "disqualification" sanctions only apply to a refusal to submit to a test for an alcohol concentration. In addition, a CMV operator must be placed "out-of-service" for 24 hours if they have any amount of alcohol in their system. A person commits a gross misdemeanor if the operate a CMV with any amount of alcohol in their system: Jail-not more than 1 yr; fine-not more than $5,000. §§9.92.020, 46.25.010(2), (6), (8) & (15), 46.25.090, 46.25.110, 46.25.120 and 46.25.170

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	
Rehabilitation:	
Alcohol Education:	**Yes** for all offs[1] §46.61.5056(1)
Alcohol Treatment:	**Yes** for all offs[1] §46.61.5056(1)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Forfeiture.**[2] A vehicle, in which a 2nd or sub DWI offender (w/n 7 yrs) has a financial interest, is subject to forfeiture. This action does not appear to be mandatory. §46.61.5058
Terms Upon Which Vehicle Will Be Released:	
Other:	**Mandatory Probation.** FOR ANY DRUNK DRIVING OFFENSE, If the court imposes <1 yr in jail, it shall suspend but not defer a period of confinement ≤5 yrs and must place an offender on probation with the following minimum conditions. (1) They cannot operate a vehicle unless they have a valid license and maintain proof of financial responsibility. (2) They cannot operate a motor vehicle with BAC/BrAC ≥**0.08**. And, (3) they must submit to implied consent tests. If an offender violates (1) in combination with either (2) or (3), they are subject to a mandatory 30 dy jail term and a license suspension for 30 dys. In addition, the court may order an offender to only operate motor vehicles that are equipped with an "ignition interlock" device. §46.61.5055(7) **Vehicle Assault-Community Placement.** A person, who has been convicted of Vehicle Assault, must be sentenced to "community placement" for at least 2 yrs. §9.94A.120(9)(b) **Probationary License.** After either the suspension or revocation period, DWI offenders' driving privileges must be placed on probationary status for 5 yrs. §§46.20.355(2) & 46.61.5055(6)
Miscellaneous Sanctions Not Included Elsewhere:	**Home Detention.** Incarceration may include "home detention". See §§9.94A.030(18) & (28) and 9.94A.190(1). Note: It is not certain whether "home detention" can be used as an alternative for the mandatory portions of the DWI imprisonment/jail sanctions. **Special Education Program.** A person convicted of a DWI offense may be required to attend an educational program that focuses on the emotional, physical and financial suffering of DWI victims. §46.61.5152 **Electronic Home Monitoring.** Electronic home monitoring may be used as an alternative to incarceration for 1st offenses and is required for 2nd or subsequent ones. §46.61.5055 For details, see Mandatory Minimum (Imprisonment) Term on pp. 3-505 & 3-506.

[1]A court ordered assessment will determine whether an offender will be required to attend either an alcohol education course or treatment. §46.61.5056
[2]A law enforcement officer may take custody and remove to a safe place a vehicle involved in a DWI offense. §46.55.113

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Cl A Felony Where death is caused by the operation of a vehicle (1) while under the influence of intoxicating liquor or any drug[1], (2) in a reckless manner or (3) with disregard for the safety of others. §46.61.520
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**Life Imprisonment**[2] §9A.20.021(1)(a)
Mandatory Minimum Term:	**None** Note: The sentencing guidelines grid would appear to require a period of incarceration.[2]
Fine ($ Range):	Not more than **$50,000** §9A.20.021(1)(a) A **Penalty Assessment** of **$500** §7.68.035(1)(a) & (2)
Mandatory Minimum Fine:	**None** Note: the Penalty Assessment is mandatory.
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §46.20.285
Length of Term of Licensing Withdrawal:	**2 yrs**[3] §46.20.285
Mandatory Action--Minimum Length of License Withdrawal:	**2 yrs**[3] No occupational license is available. §46.20.391
Other:	(1) For felony offenses (e.g., Vehicle Homicide), the court may order a defendant to pay restitution directly to a victim. §§9.94A.120(15), 9.94A.140 & 9.94A.142 (2) Also, a victim is eligible for compensation directly from a State fund. §7.68.010 et seq. (3) A person, who has been convicted of Vehicle Homicide, must be sentenced to "community placement" for at least 2 yrs. §9.94A.120(9)(b) **EMS Cost.** A defendant is liable for up to **$1,000** of the cost of an emergency response related to a DWI vehicle homicide offense. §38.52.430
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote Nos. 4 & 5 below.

[1]The State does not have to prove that a defendant's intoxication caused the victim's death. However, the State must still prove that the defendant's driving was related to the accident that caused the fatality. *State v. Rivas,* 896 P.2d 57 (Wash. 1995)

[2]Under the sentencing guidelines grid, the presumptive sentences are as follows: Vehicle homicide related to a drunk driving offense-31 to 171 mos with 2 yrs added for each prior drunk driving offense; vehicle homicide related to reckless driving-21 to 144 mos; and, vehicle homicide related to vehicle operation with disregard for the safety of others-15 to 116 mos. §§9.94A.310(1) & (7), 9.94A.320 and 46.61.520(2)

[3]The revocation is "tolled" during any period of incarceration. §46.20.285

[4]It is a gross misd to operate a CMV during either a CDL disqualification or a CDL out-or-service order. The sanctions for this offense are an imprisonment term of not more than 1 yr and/or a fine of not more than $5,000. §§9.92.020, 46.20.342(1) & 46.25.050(2) If a person operates a CMV while under an out-of-service order, they are subject to the following disqualification periods: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. If the CMV operator was driving a CDL either containing hazardous materials or designed to carry 16 or more persons, the CDL disqualification periods are as follows: 1st violation-180 dys (mand) to 2 yrs; and, sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. §46.25.90(6)

[5]Note: The vehicle used in this offense may be impounded as follows: 1st offense-Not more than **30 dys**; 2nd offense (w/n 5 yrs)-Not more than **60 dys**; and, 3rd and subsequent offense-Not more than **90 dys**. If the registered owner of the vehicle was the violator, the vehicle cannot be released until all penalties, fines or forfeitures have been satisfied. §46.55.120(a)¶(2) & (b)

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense: (continued)

Sanction:	
Criminal:	
Imprisonment (Term):	**Gross Misd** Not more than **1 yr** §§9.92.020, 9A.20.021 & 46.20.342(1)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$5,000** §§9.92.020 & 9A.20.021
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp** or **Rev** §46.20.342(2)
Length of Term of License Withdrawal Action:	An additional susp/rev period of 1 yr. §46.20.342(2)(b)
Mandatory Term of License Withdrawal Action:	The susp/rev shall not be extended if the court recommends against such extension and the driver has already obtained a valid license. §46.20.342(2)(c)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** §46.65.020
Grounds for Being Declared an Habitual Offender:	3 serious offs w/n 5 yrs or a combination of 20 minor and/or serious offs w/n 5 yrs provided that 3 minor offs must have been committed w/n the period of 360 dys for this alternative to apply.
Term of License Rev While Under Habitual Offender Status:	**7 yrs**[1] Note: There is a special stay of rev if based on DWI offs and person is attending an alcohol treatment program. Also, after 4 yrs a license may be issued upon "good and sufficient showing". §§46.65.060, 46.65.070 & 46.65.080
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Gross Misd** §46.20.341(1)(a)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	1st off-**10 dys to 1 yr**; 2nd off-**90 dys to 1 yr**; 3rd & sub. off-Not less than **1 yr** §§9.92.020, 9A.20.021, 46.20.342(1) & 46.65.090(1)
Mandatory Minimum Term of Imprisonment:	1st off-**10 dys** (if the offender has also commited a DWI off-**90 dys**); 2nd off-**90 dys**; 3rd & sub. off-**1 yr** §46.65.090(1)
Fine ($ Range):	Not more than **$5,000** §§9.92.020, 9A.20.021 & 46.65.090(1)
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	The original revocation for being an habitual violator is extended for an additional period of 1 yr. The court may recommend against such an extension. §46.20.342(2)(a) & (c)

[1]After this 7 yr period, the revocation remains in effect until the offender petitions and receives a new license from the State licensing agency. §46.65.100

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §§46.20.308(1) & 46.52.065
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1934) §§66.44.270(1) & 66.44.290
Minimum Age (Years) Possession:	**21** §66.44.270(2) Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons and for religious services.
Minimum Age (Years) Consumption:	**21** §66.44.270(2) Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons and for religious services.
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**[1]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Purchase v. Meyer,* 737 P.2d 661 (Wash. 1987)[2]
Dram Shop Actions-Social Hosts:	**No** *Reynolds v. Hicks,* 951 P.2d 761 (Wash. 1998)[3] **Comment:** This case concerned social host liability resulting from injuries caused by a minor guest to a third party. The court did not address the issue of social host liability resulting from injuries caused an adult guest to a third party.
Other:	A licensee is not liable for the injuries sustained by an intoxicated (adult) patron. *Estate of Kelly by and Through Kelly v. Falin,* 896 P.2d 1245 (Wash. 1995) See the *Hansen* case in Footnote No. 3.

[1]Note: This State's Dram Shop Law was repealed in 1955. Ch. 372 of the laws of 1955

[2]I. Applies to the actions of either (1) an obviously intoxicated patron or (2) a minor patron. See Footnote No. 10 of the *Purchase* case for other decisions (737 P.2d at 664), *Christen v. Lee,* 780 P.2d 1307 (Wash. 1989), and *Cox v. The Keg Restaurants U.S., Inc.,* 935 P.2d 1377 (Wash.App. 1997). II. A licensee, who sells alcohol beverages illegally to a minor, is liable for the injuries sustained by another intoxicated minor (not a purchaser) after they consumed such beverages. *Crowe v. Gaston,* 951 P.2d 1118 (Wash. 1998), & *Schooly v. Pinch's Deli Market, Inc.,* 951 P.2d 749 (Wash. 1998) In addition, a third party, who is injured by an intoxicated minor, was able to bring a cause of action against a licensee who provided alcoholic beverages to an under age person who in turn provide such beverages to the injury causing minor. *Rinks v. Bearss,* 921 P.2d 558 (Wash.App. Div. 1 1996)

[3]Nothwithstanding the *Reynolds* decision, an adult social host was held liable for the death of an intoxicated minor guest. *Hansen v. Friend,* 824 P.2d 483 (Wash. 1992) **Comment:** Given the language in the *Hansen* case, it appears that a commercial server of alcoholic beverage can be held liable for the injures (or death) of an intoxicated minor patron. And, in another case, an employer was held liable for the injuries caused by an intoxicated employee to a third party. The employee became intoxicated at a company sponsored banquet. *Fairbanks v. J.B. McLoughlin Co. Inc.,* 929 P.2d 433 (Wash. 1997)

Other State Laws Related To Alcohol Use: (continued)

Note: Sec. 4.56.250(2), that limited the amount of non-economic damages a person could receive in civil (tort) action, was declared in violation of the State's constitution. *Sofie v. Fibreboard Corp.*, 771 P.2d 711 (Wash. 1989)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:	**Misd/Gross Misd** §§9A.20.010(2), 66.44.180 & 66.44.200
Term of Imprisonment:	1st off (misd) - Not more than **2 mos**; 2nd off (gross misd) -Not more than **6 mos**; 3rd and subsequent offs (gross misd) - Not more than **1 yr**
Fine ($ Range):	For individuals: 1st off - Not more than **$500**[1]; 2nd and sub off-**None** For corporations: 1st off - Not more than **$5,000**[1]; 2nd and subsequent offs - Not more than **$10,000**[1] (and/or forfeiture of its corporate license.)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Cancel (Rev)** §§66.24.010 & 66.44.200
Length of Term of License Withdrawal:	Not specified in the statute

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:	**Gross Misd** §66.44.270(1)
Term of Imprisonment:	Not more than **1 yr** §9A.20.021(2)
Fine ($ Range):	Not more than **$5,000**[1] §9A.20.021(2)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes Susp/Cancel (Rev)**
Length of Term License Withdrawal:	Not specified in the statute §§66.24.010, 66.44.180, 66.44.320 & 66.44.325

[1]There is an assessment of **$250** for a 1st or sub misd and **$500** for a 1st or sub gross misd. For juvenile offenders, there is an assessment of **$75** for a 1st or sub misd and **$100** for a 1st or sub gross misd. §7.68.035(1)(a) & (b)

Other State Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §46.61.519(2)[1&2]
Anti-Consumption Law (Yes/No):	**Yes** Driver and Passengers[2] §46.61.519(1)[1] Note: Under §66.44.100, "no person shall open the package containing liquor or consume liquor in a public place." The law allows for exceptions (e.g. licensed establishments).

[1]A violation is a traffic infraction.
[2]Does not apply to passengers in commercially chartered vehicles or in the living quarters of a motor home or camper.

STATE	**WEST VIRGINIA**
General Reference:	West Virginia Code

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §17C-5-2
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1] §17C-5-2 Persons Under 21 Years Old ≥**0.02 but <0.10**[1] §17C-5-2(h)
Presumption (BAC/BrAC):	≥**0.10**[1] §17C-5-8
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**, (2) Controlled Substance or (3) a Combination of Alcohol and Any Other Controlled Substance or Any Other Drug §17C-5-2 Habitual users of narcotic drugs, amphetamine or any derivative thereof §17C-5-2
Other:	An alcohol concentration ≥**0.10**[1] is also *prima facie* evidence of driving under the influence of alcohol. §17C-5-8 An alcohol concentration **>0.05 but <0.10**[1] is "relevant evidence" (but not *prima facie* evidence) of driving while under the influence of alc. §17C-5-8 For Commercial Motor Vehicle Operators, see p. 3-518.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §§17C-5-4 (¶1), 17C-5-5 & 17C-5-6a(a)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§17C-5-4 & 17C-5-6a(b)
Implied Consent Law Applies to Drugs (Yes/No):	**No**
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *State v. Cozart,* 352 S.E.2d 152 (W.Va. 1986)
Other Information:	**None**

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §§17C-5-4 & 17C-5-6a(c)
Urine:	**Yes** §§17C-5-4 & 17C-5-6a(c)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**

[1]The standard for alcohol concentration is percent by weight of alcohol in the blood. §§17C-5-2, 17C-5-8 & 17C-5A-1 However, this standard is based upon a formula of (1) grams of alcohol per one hundred cubic centimeters of blood, (2) grams of alcohol per 210 liters of breath and (3) grams of alcohol per 67 milliliter of urine. §17C-5-8

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
None
Administrative Licensing Action (Susp/Rev): **None**
Other: **None**

Refusal to Take Implied Consent Chemical Test:
Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): 1st Refusal-**Rev-1 yr** (mand[1] *Kimes v. Bechtold,* 342 S.E.2d 147 (W.Va. 1986)); 2nd Refusal[2]-**Rev-10 yrs** (5 yrs mand[3]); 3rd Refusal[2]-**Rev-life** (10 yrs mand[3]) §§17C-5-4 & 17C-5-7 These revocations are to run concurrently with any other susp/rev resulting from the same incident. §17C-5-7(a) See Footnote No. 1 on p. 3-522. **Special Note:** A refusal to submit to chemical test based on a blood sample does not result in license revocation. §§17C-5-4 & 17C-5-6a(c)
Other: Note: Under §17C-5-6a(c), a child (a person under 18 yrs old §§49-1-3 & 49-5-8) may be taken into custody if a law enforcement officer has reasonable grounds to believe that they have been operating a motor vehicle with any amount of alcohol in their body. The law requires that the child be warned that, if they refuse to submit to the implied consent test, their license could be suspended from 30 dys to life.[4]

[1]Thirty (30) dys mandatory if the person participates in the ignition interlock program (see p. 3-522)) §17C-5A-3a(c)(2)
[2]A previous admin. per se violation is also considered a prior refusal for licensing sanction enhancement purposes. §17C-5-7(b)
[3]Eighteen (18) mos mandatory rev if the person participates in the ignition interlock program. §17C-5A-3a(c)(4) & (e)(3) **Comment:** For a 2nd refusal, the law appears to require a mand rev period of 18 mos before a person is eligible to participate in the ignition interlock program. However, the regulations (which have also been enacted into law via §64-8-1(b)) that implement this program seem to indicate that only a 9 mo mand revocation is required prior to participation. §91-9-3.4.3 (regulation) Note: Certain subsequent violators are not eligible for this program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program" on p. 3-522.
[4]**Comment:** The licensing sanctions provisions of the implied consent law, §17C-5-7, do not provide for a 30 dy license suspension for such a refusal by these persons.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (mand) (not less than 3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood; grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of either alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. (Note: The CMV implied consent provision, §17E-1-15(a), applies to the testing of both alcohol and drugs; however, the disqualification provision, §17E-1-13(a)(5), applies only to refusal to submit to a test for an alcohol concentration.) For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who either (1) refuses to take a PBT or (2) has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. Unless the law provides for another sanction, it is a misdemeanor to violate any of the provisions of the CMV/CDL law: Jail-not more than 6 months; fine-$100 to $1,000. However, there are special criminal sanctions in two circumstances. (1) A person, who operates a CMV with any measurable amount of alcohol in their system is subject to the following sanctions: 1st off-jail-none; fine not more than $100; 2nd off-jail-not more than 30 dys; fine-$100 to $300; 3rd and sub. off-jail-24 hrs to 30 dys; fine-$500 to $1,000 and (2) a person, who operates a CMV with any a BAC/BrAC/UrAC ≥0.04 is subject to the following sanctions: 1st off-jail-24 hrs to 6 mos; fine-$100 to $500; 2nd and sub. off (misd)-jail-6 mos to 1 yr; fine-not less than $1,000. §§17E-1-3, 17E-1-13, 17E-1-14, 17E-1-15 & 17E-1-25

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Child Endangerment and Persons Under 21 Years Old below.
Imprisonment:	See Footnote No. 3.
Term (Day, Month, Years, Etc.):	DWI not related to death or bodily injury, 1st off-**1 dy[1] to 6 mos**; 2nd off-**6 mos to 1 yr**; 3rd and Sub offs[2]-**1 to 3 yrs**; DWI resulting in death where there is reckless disregard of the safety of others[2]-**1 to 10 yrs**; DWI resulting in death where there is an illegal act or a failure to perform a legal duty, 1st off-**90 dys to 1 yr**; 2nd off-**6 mos to 1 yr**; 3rd and Sub offs[2]-**1 to 3 yrs**; DWI resulting from bodily injury where there is an illegal act or a failure to perform a legal duty, 1st off-**1 dy[1] to 1 yr**; 2nd off-**6 mos to 1 yr**; 3rd and Sub offs[2]-**1 to 3 yrs** §17C-5-2
Mandatory Minimum Term:	See Footnote No. 4 below and Home Confinement and Community Service on p. 3-520.
Fine:	See Footnote No. 3.
Amount ($ Range):	DWI not related to death or bodily injury, 1st off-**$100 to $500**; 2nd off-**$1,000 to $3,000**; 3rd and Sub offs[2]-**$3,000 to $5,000**; DWI resulting in death where there is reckless disregard of the safety of others[2]-**$1,000 to $3,000**; DWI resulting in death where there is an illegal act or a failure to perform a legal duty, 1st off-**$500 to $1,000**; 2nd off-**$1,000 to $3,000**; 3rd and Sub offs[2]-**$3,000 to $5,000**; DWI resulting from bodily injury where there is an illegal act or a failure to perform a legal duty, 1st off-**$200 to $1,000**; 2nd off-**$1,000 to $3,000**; 3rd and Sub offs[2]-**$3,000 to $5,000** §17C-5-2
Mandatory Min. Fine ($):	Sec. 17C-5-21(p) provides that the above minimum fine sentences are mandatory and are not subject to either suspension or probation.
Other Penalties:	
Community Service:	**Yes** §62-11A-1a See Alternative Sentences below.

[1]Actual confinement of not less than 24 hrs.

[2]Felony

[3]It is a misdemeanor for a person to drive a vehicle if they are an habitual user of narcotic drugs, an amphetamine or any derivative thereof. The sanctions for this offense are as follows: Imprisonment from 1 day to 6 months with actual confinement of not less than 24 hours and/or a fine of from $100 to $500. §17C-5-2(e)

[4]Sec. 17C-5-2(p) provides that the DWI sanctions are mandatory and are not subject to either susp or probation. I.e., the minimum imprisonment sanction, it appears, must be served. However, this section does provide that, for jail sentences of one (1) yr or less (misdemeanors), the provisions of either §62-11A-1 et. seq. or §62-11B-1 et seq. may be applied by the court. In brief, §62-11A-1 et seq. provide for a defendant's temporary release from confinement for employment, educational, medical, or family needs or reasons. *State v. Kerns,* 394 S.E.2d 532 (W.Va. 1990) And, §62-11B-1 et seq. provide for electronically monitored **"home incarceration"** for certain non violent offenders in lieu of confinement in either a jail or the State penitentiary.

Child Endangerment. A person, who violates the drunk driving law while transporting a child < 16 yrs old, commits a misd and is subject to a jail term of 2 dys to 12 mos (with 48 hrs of actual confinement mand) and/or a fine of $200 (mand) to $1,000. §17C-5-2(i)

Persons Under 21 Years Old. Persons under 21 years old, who operate a motor vehicle with an alcohol concentration ≥**0.02 but <0.10**, are subject to the following sanctions: 1st off (misd)-Jail-**None**; fine-**$25 (mand) to $100** A first offender may have the charges dismissed and their record expunged if the successfully compete an alcohol safety/treatment and interlock program. Sub off (misd)-Jail-**24 hrs** (mand); fine-**$100 (mand) to $500** A person charged with a regular DWI offense cannot be charged with this offense for the same occurrence. §17C-5-2(h)

Alternative Sentences. In lieu of either a fine or incarceration sanction (except mandatory incarceration via statute), a court may impose one of the following sentences: Either (1) a weekend jail program where the offender spends weekends or "other days normally off from work" in confinement; (2) first one or two days in confinement followed by work assignments either within the jail or on other public works projects outside of the jail; or, (3) a community service program with either government entities, charitable or other non-profit organizations which have been approved by the court. §62-11A-1a(a) & (c)(1)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Restitution (eg Victim's Fund):	**Yes** Victims' Compensation Fund. §14-1-1 et seq. & §14-2A-3 et seq. Direct compensation by the defendant to the victim via court order is also possible. §14-2A-3(b)(1)
Other:	**Home Confinement.** Under §62-11B-4 et seq., the court has the authority to order the use "electronically monitored home confinement" in misdemeanor cases in lieu of incarceration. *State v. Kerns,* 394 S.E.2d 532 (W.Va. 1990) **Assessments.** A fee of 20% of the fine imposed is assessed against each DWI offender. Felony offenders are also assessed a fee of $50. These assessments are deposited into the Crime Victims Compensation Fund. §§14-2A-4 & 62-5-10 **Alternative Sentences.** See Alternative Sentences on p. 3-519.
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Child Endangerment and Persons Under 21 Years Old on p. 3-521.
Administrative Per Se Law:	**Yes** ≥**0.10** (BAC/BrAC/UrAC See Footnote No. 1 on p. 3-517.) or **Driving While Under the Influence of Alcohol[1], a Controlled Substance or Other Drugs** Admin actions where there is neither a death nor a bodily injury: 1st action-**6 mos rev** (90 dys mand[2]); 2nd action[4]-**10 yrs rev** (5 yrs mand[3]); Sub action[4]-**Rev for life** (10 yrs mand[5]). Admin. actions where there is a death and the driver has also acted in reckless disregard for the safety of others 1st action-**10 yrs rev** (5 yrs mand), Sub action[4]-**Rev for life** (10 yrs mand). Admin actions where there is a death of a person but no recklessness on the part of the driver: 1st action-**5 yrs rev** (2 1/2 yrs mand); Sub action[4]-**Rev for life** (10 yrs mand). Admin actions where there is bodily injury: 1st action-**2 yrs rev** (1 yr mand); 2nd action[4]-**10 yrs rev** (5 yrs mand) Sub action[4]-**Rev for life** (10 yrs mand) §§17C-5A-1, 17C-5A-2 & 17C-5A-3. See Special Note Nos. 1 & 2 on p. 3-521. Note: The admin. per se law appears to apply to both residents and nonresidents. §17B-3-2

[1]An alcohol concentration >0.05 but <0.10 is "relevant evidence" of driving while under the influence of alcohol. §17C-5-8 Note: The State can revoked a person's license administratively for driving while under the influence of alcohol without the necessity of establishing an alcohol concentration. Constitutional principles of due process of law do not require that a person be administered a test for blood alcohol concentration before their driving privileges can be withdrawn administratively for driving while under the influence of alcohol. *Albrecht v. State,* 314 S.E.2d 859 (W.Va. 1984), & *Dean v. W.Va. Dept. of Motor Vehicles,* 464 S.E.2d 589 (W.Va. 1995)

[2]Thirty (30) dys mandatory if the person participates in the **ignition interlock** program. §17C-5A-3a(c)(1) & (e) For more details, see "Ignition Interlock Program" on p. 3-522.

[3]Nine (9) mos mandatory if the person participates in the **ignition interlock** program. §17C-5A-3a(c)(3) However, certain subsequent offenders are not eligible for this program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program" on p. 3-522.

[4]w/n 10 yrs A prior action includes any suspension or revocation under the admin. per se law.

[5]Eighteen (18) mos mandatory if the person participates in the **ignition interlock** program. §17C-5A-3a(c)(4) **Comment:** Although the ignition interlock law does not provided for it, the regulations that implement the ignition interlock program provide that, if a person has had more than 3 admin per se or drunk driving offense related revocations, their license must be revocation for an additional 6 mos "for each offense greater than three" before they are eligible to participate in this program. §91-9-3.4.5 (regulation) Note: Certain subsequent offenders are not eligible for this program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program" on p. 3-522.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Special Note No 1: I. Vehicle operation by an habitual user of a narcotic drug, an amphetamine or any derivative thereof: 1st action-**Rev 6 mos**; 2nd action-**Rev 10 yrs**; Sub action-**Rev for life** See Footnote No. 4 on p. 3-520. §17C-5A-2(i)
II. A previous implied consent refusal is also considered a prior admin. per se action for licensing sanction enhancement purposes. §17C-5A-2(j)
III. For an admim. per se action based on driving while under the influence of alcohol where there was no alc. concentration evidence, see *W.Va. Div. of Motor Vehicles v. Cline,* 423 S.E.2d 882 (W.Va. 1992).
IV. For cases upholding mand admin. per se action revocations, see *Wagoner v. Sidropolis,* 399 S.E.2d 183 (W.Va. 1990), and *Dept. of Motor Vehicles v. Sanders,* 399 S.E.2d 455 (W.Va. 1990).
Special Note No 2: I. The minimum mandatory license revocation periods above apply only if the person is participating in an alcohol/drug treatment program. Otherwise, the person has to have their driving privileges revoked for the entire revocation period. §17C-5A-3
II. A person, under 21 years old, who has violated the admin. per se law, must have their license revoked until they are 21 or for the applicable statutory period whichever is longer. §17C-5A-2(n) However, there is a only 1 yr mand. revocation if the person under 21 years old participates in the ignition interlock program. §17C-5A-3a(c)(3) & §91-9-3.4.5 (Regulation 91 CSR 9)

Other:

Under §§17B-3-6 & 17B-3-8, license susp for not more than 1 yr if a person has "committed" an off that requires mandatory license rev (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.
Persons Under 21 Years Old. Admin. per se actions taken against persons under 21 years old, who operate a vehicle with an alcohol concentration ≥**0.02 but <0.10** (BAC/BrAC/UrAC See Footnote No. 1 on p. 3-517.): 1st & sub action-**60 dys susp** (mand) 30 dys mand if the person participates in the ignition interlock program. For persons under 18 yrs old, 30 dys mand or until they are 18 whichever is the longer susp period. Admin. actions where there is a death and the driver has also acted in reckless disregard for the safety of others: 1st ction-**10 yrs rev** (5 yrs mand); sub action[1]-**Rev for life** (10 yrs mand). Admin actions where there is a death of a person but no recklessness on the part of the driver: 1st action-**5 yrs rev** (2 1/2 yrs mand); sub action[1]-**Rev for life** (10 yrs mand). Admin actions where there is bodily injury: 1st action-**2 yrs rev** (1 yr mand); 2nd action[1]-**10 yrs rev** (5 yrs mand); sub action[1]-**Rev for life** (10 yrs mand) §§17C-5-2(h), 17C-5A-1, 17C-5A-2 & 17C-5A-3.

[1]w/n 10 yrs A Prior action includes any suspension or revocation under the admin. per se law.

Child Endangerment. A person, who violates the admin. per se law while transporting a child <16 yrs old, is subject to a 2 yr revocation (mand). If the person has had a previous admin. per se license suspenison or revocation (w/n 10 yrs), the revocation period is 10 yrs (mand). And, if the person has more than one previous admin. per se license suspenison or revocation (w/n 10 yrs), the revocation period is for life (mand). §17C-5A-2(m)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	The same licensing sanctions as for an admin per se violation. §17C-5A-1a
Term of License Withdrawal (Days, Months, Years, etc.):	
Mandatory Minimum Term of Withdrawal:	
Other:	
Rehabilitation:	
Alcohol Education:	**Yes**[1] §17C-5A-3 After (1) the period of mandatory rev has elapsed and (2) the driver has successfully completed an approved program of either alcohol/drug education or alcohol/drug treatement, a defendant's license may be reissued with or without conditions. Also, a person who participates in the "Ignition Interlock Program" must complete a safety and treatment program. §17C-5A-3a(b)(1)
Alcohol Treatment:	**Yes** See above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**None**

[1]A person, who has refused to submit to a chemical test, must successfully complete an alcohol education or treatment program before their license can be reinstated. §17C-5A-3

Ignition Interlock Program (Available Only to Persons ≥18 Years Old). The driver licensing agency may reduce the mandatory and regular revocation periods of certain implied consent, admin. per se and DWI law offenders, if they agree to operate motor vehicles equipped with ignition interlock devices. A person must either be participating in or have successfully completed a safety and treatment program to be eligible to participate in the ignition interlock program. However, a person is not eligible for this program if (1) they have been involved in either death related admin. per se or DWI law violation (**Comment:** The law provides that only offenders, who have committed a death related drunk driving offense are ineligible for this program. However, under the regulations that implement the program, offenders who have committed an injury related admin per se or drunk driving offense are also excluded from the program. §91-3-3.6 (regulation)), (2) they have been involved in a violation of the implied consent, admin. per se or DWI laws while participating in the program, or (3) they have previously been in the program. 1st admin. per se violation/DWI off: The ignition interlock must be used for 5 mos. 1st refusal: The ignition interlock must be used for 9 mos. 2nd admin. per se violation or DWI off: The ignition interlock must be used for 18 mos. Sub admin. per se violation or DWI off and 2nd or sub refusal: The ignition interlock must be used for 2 yrs. **Comment:** Although the ignition interlock law does not provided for it, the regulations that implement the ignition interlock program provide that, if a person has had more than 3 admin per se, refusal, or drunk driving offense related revocations, they must use an ignition interlock for an additional 1 yr "for each offense greater than three." §91-9-3.4.5 (regulation) Persons <21 yrs old-vehicle operation with an alcohol concentration ≥0.02 but <0.10: The law appears to require that the ignition interlock be used for 6 mos. First time participants have their driver licensing records expunged. §17C-5A-3a(c),(e) & (f) and §91-9-3 (Regulation 91 CSR 9) The regulations were adopted via legislation; see §64-8-1(b).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes Misd**[1] Negligent homicide §17C-5-1 Note: For the details on deaths related to DWI, see DWI sanctions on pp. 3-519 & 3-520.
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **1 yr** §17C-5-1(b)
Mandatory Minimum Term:	**None**
Fine ($ Range):	**$100 to $1,000** §17C-5-1(b)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §§17B-1-1(q), 17B-3-5 & 17C-5-1(c)
Length of Term of Licensing Withdrawal:	**1 yr**
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr**
Other:	See Alternative Sentences on p. 3-519.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. 2 and the Special Note below. See Alternative Sentences on p. 3-519.
Sanction:	
Criminal:	
Imprisonment (Term):	1st off (misd)-**6 mos**[3]; 2nd off (misd)-**1 yr**[3]; 3rd and subsequent offs (felony)-**1 to 3 yrs**[3] (penitentary) §17B-4-3(b)
Mandatory Minimum Term of Imprisonment:	1st off-**6 mos**[3]; 2nd off-**1 yr**[3]; 3rd and sub offs-**1 yr**[3]
Fine ($ Range):	1st off-**$100 to $500**; 2nd off-**$1,000 to $3,000**; 3rd and sub offs-**$3,000 to $5,000** §17B-4-3(b)
Mandatory Minimum Fine:	1st off-**$100**; 2nd off-**$1,000**; 3rd and sub offs-**$3,000**

[1]This offense is a misdemeanor via §17C-18-1(a).
[2]It is a misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. For a 1st offense, a person is subject to an imprisonment term for not more than 6 mos and/or a fine of $100 to $1,000. For a 2nd offense, a person is subject to an imprisonment term of 6 to 9 mos and/or a fine of $500 to $2,000. And, for a 3rd or subsequent offense, a person is subject to an imprisonment term of 9 mos to 1 yr and/or a fine of $1,000 to $2,500. §§17E-1-7(b) & 17E-1-25
[3]Home detention may be used as an alternative to incarceration. §17B-4-3(e)

Special Note: A person under 21 years old, who operates a vehicle after their license has been either suspended or revoked for driving with an alcohol concentration ≥**0.02 but <0.10**, commits a misdemeanor and is subject to a jail term of **24 hrs** (mand) and/or a fine of **$50 (mand) to $500** §17B-4-3-(d) **Comment:** There appears to be no additional licensing action (suspension or revocation) for this offense.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev**
Length of Term of License Withdrawal Action:	**1 yr** extension of the original licensing action §17B-4-3(c)
Mandatory Term of License Withdrawal Action:	Same as above.

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §17C-5B-1
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** (Adult pedestrians)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1986)[1]
Minimum Age (Years) Possession:	**21** §§11-16-19(a), 60-3A-24(A) & 60-8-20a(a)
Minimum Age (Years) Consumption:	**21** §§11-16-19(a), 60-3A-24(A) & 60-8-20a(a)

[1]§§11-16-18(a)(3), -16-19(a) and 60-3-12(3), -3-22(1), -3-22a, -3A-24(A), -6-8(4), -7-12(a)(3), -7-12a, -8-20(c) & -8-20a

Other State Law Related to Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Bailey v. Black,* 394 S.E.2d 58 (W.Va. 1990), *Anderson v. Moulder,* 394 S.E.2d 61 (W.Va. 1990), & *Walker v. Griffith,* 626 F.Supp. 350 (W.D. Va. 1986)
Dram Shop Actions-Social Hosts:	**No*** *Overbaugh v. McCutcheon,* 396 S.E.2d 153 (W.Va. 1990)
Other:	A licensee may be liable for the injures sustained by an intoxicated patron (adult or minor). *Bailey v. Black,* 394 S.E.2d 58 (W.Va. 1990), & *Anderson v. Moulder,* 394 S.E.2d 61 (W.Va. 1990)
Criminal Action Against Owners or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** For all offenses See Alternative Sentences on p. 3-519.
Term of Imprisonment:	Alcoholic Liquor[1&6]: Private Pkg Retail Sales[2]-**30 dys to 1 yr**; Special Licensees[3]-**30 dys to 1 yr**; Private Clubs[4]-**not more than 1 yr**; Wines[5]-**30 dys to 6 mos**. Nonintoxicating Beer[1&7]: Class A & B Licensees-**30 dys to 6 mos**. Footnotes are on p. 3-526.
Fine ($ Range):	Alcoholic Liquor[1&6]: Private Pkg Retail Sales[2]-**$100-$5,000**; Special Licensees[3]-**$50 to $500**; Private Clubs[4]-**$100 to $500**; Wines[5]-**$25 to $500**. Nonintoxicating Beer[1&7]: Class A & B Licensees-**$25 to $500**. Footnotes are on p. 3-526.
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Discontinued, suspended or revoked**
Length of Term of License Withdrawal:	Alcoholic Liquor[1&6]: Private Pkg Retail Sales[2] (also, a civil penalty of not more than $1,000); Special Licensees[3]-Rev time period is not specified but normal licensing period is **one (1) year**; Private Clubs[4]-**Rev/susp**-Licenses are usually revoked for **up to one (1) year** (in lieu of rev, a monetary penalty of not more than $1,000); Wines[5]-Rev/susp time period is not specified in the statute. Nonintoxicating Beer[1&7]: Class A & B Licensees-**Rev/susp**-If the license is revoked, no new license shall be issued for **two (2) years**; the statute does not state a specific time period for a suspension. There is also, a monetary penalty of not more than $1,000. Footnotes are on p. 3-526.

***Comment:** Generally, social hosts are not liable for the actions of their intoxicated guests. This is especially true in cases where the guests serve alcoholic beverages to themselves. However, there may be extenuating circumstances where liability could result. In *Price v. Halstead,* 355 S.E.2d 380 (W.Va. 1987), 64 ALR4th 255, the court held that a passenger, who was riding in a vehicle driven by a drunken driver, could be held liable for the injuries sustained by a third party as a result of the driver's actions provided "the passenger's conduct substantially encouraged or assisted the driver's alcohol or drug impairment." 355 S.E.2d at 389, 64 ALR4th at 271.

Other State Law Related to Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action: **Misd** For all offenses See Alternative Sentences on p. 3-519.

Term of Imprisonment: Alcoholic Liquor[1&6]: Private Pkg Retail Sales[2]-**30 dys to 1 yr**; Special Licensees[3]-**30 dys to 1 yr**; Private Clubs[4]-**not more than 1 yr**; Wines[5]-**30 dys to 6 mos**. Nonintoxicating Beer[1&7]: Class A & B Licensees-**30 dys to 6 mos**.

Fine ($ Range): Alcoholic Liquor[1&6]: Private Pkg Retail Sales[2]-**$100 to $5,000**; Special Licensees[3]-**$50 to $500**; Private Clubs[4]-**$100 to $500**; Wines[5]-**$25 to $500**. Nonintoxicating Beer[1&7]: Class A & B Licensees-**$25 to $500**.

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcohlic Beverages Withdrawn (Yes/No): **Yes Discontinued, suspended or revoked**

Length of Term License Withdrawal: Alcoholic Liquor[1&6]: Private Pkg Retail Sales[2]; Special Licensees[3] (also a civil penalty of not mróe than $1,000)-Rev time period is not specified but normal licensing period is **one (1) year**; Private Clubs[4]-**Rev/susp**-Licenses are usually revoked for **up to one (1) year** (in lieu of rev, a monetary penalty of not more than $1,000); Wines[5]-Rev/susp time period is not specified in the statute. Nonintoxicating Beer[1&7]: Class A & B Licensees-**Rev/susp**-If the license is revoked, no new license shall be issued for **two (2) years**; the statute does not state a specific time period for a suspension. There is also, a monetary penalty of not more than $1,000.

[1]Alcoholic Liquor-all alcoholic beverages except nonintoxicating beer; nonintoxicating beer-all cereal malt beverages and malt coolers containing at least 0.5% alcohol by volume but not more than 4.2% alcohol by weight or 6% by volume whichever is greater. §§11-16-3 & 60-1-5.

[2]The sale of packaged alcoholic liquor is via licensed private retail outlets. Under previous law, the State had a monopoly on such sales. §60-3A-2 et seq.

[3]Special Licensees-E.g., manufacturers of alcoholic liquor, wholesale and retail druggists, users of alcohol for scientific purposes, users of wine for sacramental purposes, etc. §60-4-1 et seq.

[4]Private Clubs, which are not open to the public, may be licensed to sell alcoholic liquor by the drink. §60-7-1 et seq.

[5]Licenses may be granted for the "off premises" consumption of wine by any retailer. Licenses may be granted for the "on premises" consumption of wine to restaurants which are not open to the public. §60-8-1 et seq.

[6]Alcoholic Liquor-citations: Private Pkg Retail Sales-§§60-3A-25, 60-3A-26 & 60-3A-27; Special Licensees-§§60-3-22, 60-4-1, 60-4-1 & 60-6-8; Private Clubs-§§60-7-12 & 60-7-13; Wines-§§60-8-18, 60-8-20 & 60-8-25

[7]Nonintoxicating Beer-citations: §§11-16-9, 11-16-18, 11-16-23 & 11-16-25 **Special Note:** Class A Licenses ("on and off premisis" sales) are issued (1) to retail businesses (profit) and (2) to social, fraternal, private clubs, etc. (non-profit); Class B Licenses ("off premisis" sales only) are issued to retail food stores.

Other State Law Related to Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:
No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No:	**Yes** Driver and passengers[1] §60-6-9(a)(3)

[1]The law does not apply to the consumption of non-intoxicating beer.

STATE:	**WISCONSIN**
General Reference:	Wisconsin Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an intoxicant §346.63(1)(a) & (2)(a)
Illegal Per Se Law (BAC/BrAC):	I. If a person has had one or no prior DWI offense convictions or implied consent test refusals, it is illegal for them to operate a vehicle with a "prohibited alcohol concentration" ≥**0.10**.[1] II. If a person has had two or more DWI offense convictions or implied consent test refusals, it is illegal for them to operate a vehicle with a "prohibited alcohol concentration" ≥**0.08**.[1] §§340.01(46m), 343.307(1), 346.63(1)(b) & (2)(a)(2) and 940.25 Persons Under 21 Years Old. Alcohol Concentration **>0.00 but <0.10**[1] §346.63(2m)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**, (2) an Intoxicant, (3) a Controlled Substance, (4) a Combination of an Intoxicant and a Controlled Substance or (5) a Combination of an Intoxicant and Any Other Drug §§346.63(1)(a) & (2)(a)(1), 450.01(1) (definition of the term "drug") and 885.235(5)(b) & (c)
Other:	I. 1st or 2nd off-An alcohol concentration ≥0.10[1] is *prima facie* evidence of driving either (1) while under the influence of an intoxicant or (2) with an alcohol concentration ≥0.10[1] §885.235(1)(c) II. 3rd or subsequent off-An alcohol concentration ≥0.08[1] is *prima facie* evidence of driving either (1) while under the influence of an intoxicant or with an alcohol concentration ≥0.08[1] §885.235(1)(cd) Persons Under 21 Years Old. Under §885.235(1)(1m), an alcohol concentration >0.00 but <0.10[1] is *prima facie* evidence of such concentration. For Commercial Motor Vehicle Operators, see p. 3-534.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §§343.303 & 343.305(3)(am) (CMV operators)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §343.305(3)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §343.305(2)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *State v. Bolstad,* 370 N.W.2d 257 (Wis. 1985) However, if the implied consent law's provisions are not followed, a refusal cannot be admitted into evidence. *State v. Algaier,* 478 N.W.2d 292 (Wis.App. 1991)
Other Information:	The State supreme court has held that a blood sample may be obtained via force if done in a constitutional manner.[2] *State v. Bolhing,* 494 N.W.2d 399 (Wis. 1993) **Special Note:** This case was only concerned with obtaining a blood sample for the purpose of testing such sample for alcohol concentration.

[1]"Prohibited alcohol concentration" or "alcohol concentration" is based either on percent by weight of alcohol in the blood or on "grams of alcohol in 210 liters of breath". §§340.01(46m) & 346.63(2m) These standards also apply to the administrative per se law.
[2]Note: The implied consent law, §343.305, does not specifically prohibit or authorize the taking of a blood sample by force. Under §343.305(3)(c), a law enforcement officer has the right to obtain evidence "by any lawful means."

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes**
Urine:	**Yes**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**[1]
Anti-Plea Bargaining Statute (Yes/No):	**No** Note: However, the court must approve dismissals of or amendments to DWI charges. §967.055
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes (Limited)** Alcohol Assessment I. Discretionary alcohol assessment for two (2) or more DWI offenses w/n 1 year. II. Mandatory alcohol assessment where there has been an injury related DWI offense. III. The licensing agency may require an applicant for a driver's license to submit to an alcohol assessment. §§343.16(5)(a) & 343.30(1q)(c)1

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal[2] - **1 yr rev**, after 30 dys of the rev period, the driver is eligible for an occupational license; 2nd refusal (w/n 10 yrs)[2] - **2 yr rev**, after 90 dys of the rev period, the driver is eligible for occupational license; 3rd and subsequent refusal[2] - **3 yr rev**, after 120 dys of rev period, the driver is eligible for an occupational license; Note: Previous DWI convictions and admin. per se actions are considered to be prior refusals. §§343.10, 343.305(9) & (10) and 343.307(2)
Other:	I. If a person, under 21 years old has been arrested for a violation of §346.63(2m), driving with an alcohol concentration >0.00 but <0.10, refuses to submit to a chemical test, their license is revoked for six (6) months (**Child Endangerment:** 12 mo revocation if the driver was transporting a person <16 yrs old). After the first 15 days of this revocation period have passed, an occupational license can be issued.

[1]Deferred prosecution for DWI offenders is generally prohibited. §§967.055(3) & 971.39 Note: Deferred prosecution is only available in counties having a population of less than 100,000. §971.39

[2]**Child Endangerment.** If the driver was transporting a person <16 yrs old at the time of the drunk driving arrest and refusal, the minimum and maximum license revocation periods are double. §343.305(10((b)(4m)

Sanctions for Refusal to Submit to a Chemical Test: (continued)

Other: (continued)

A refusal based only on this offense is not considered a prior refusal for enhanced sanctioning purposes for either DWI convictions or other chemical test refusals. §§343.305(10)(em) & 346.63(2m)
II. For a 3rd refusal where there has been 2 prior refusals, a person's vehicle may be **immobilized, forfeited or equipped with an ignition interlock device** Note: The court can only order the use of an ignition interlock device for ≤2 yrs. §346.65(6)(m)) A vehicle is not to be immobilized or equipped with an ignition interlock device if it would cause undue hardship, extreme inconvenience or endanger the health or safety of a person. §§343.305(4)(b) & (10m) and 346.65(6) See Footnote No. 1 on p. 3-534.
III. 4th or sub refusal (w/n 10 yrs)-Vehicle **forfeiture**. §§343.305(10m) & 346.65(6) See Footnote No. 1 on p. 3-534.
IV. A person is required to submit to an alcohol assessment and comply with a driver safety plan. §343.305(10((d) See Alcohol Education on p. 3-534.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Double Jeopardy below and Child Endangerment on p. 3-535.

Imprisonment:

Term (Day, Month, Years, Etc.):

Non-injury related DWI off: 1st off-**None**[1]; 2nd off (w/n 10 yrs)-**5 dys to 6 mos**; 3rd off-**30 dys to 1 yr**; 4th off-**60 dys to 1 yr**; 5th and sub offs-**6 mos to 5 yrs**; Injury related DWI offs, Without great bodily harm-**30 dys to 1 yr**; With great bodily harm (including great bodily harm to an unborn child) (Cl D felony)-Not more than **10 yrs**[2] (Not more than 20 yrs if transporting a person < 16 yrs old or an unborn child) See "Other" on p. 3-534. §§346.63(1) & (2), 346.65(2), 346.65(3m), 939.50 & 940.25

Mandatory Minimum Term:

Non-injury related DWI off: 1st off-**None**; 2nd off-**5 dys**[3]; 3rd off-**30 dys**[3]; 4th off-**60 dys**[3]; 5th and sub offs-**1 mos**[4]; Injury Related DWI off (without great bodily harm)-**30 dys**[3]

[1]A first DWI conviction is a "civil conviction". *Racine County v. Smith,* 362 N.W.2d 439 (Wis.App. 1984), & *State v. Lanton,* 482 N.W.2d 142 (Wis.App. 1992).
[2]In lieu of a continuous prison sentence, a defendant may serve a series of periods of confinement of not less than 48 hrs nor more than 3 dys. §§969.08(10)(b) & 973.03(5)
[3]*State v. Meddaugh,* 435 N.W.2d 269 (Wisc.App. 1988) (review denied 439 N.W.2d 143), *State v. Duffy,* 194 N.W.2d 624 (Wis. 1972) & 71 Op. Atty. Gen. Wis. 41 **Comment:** Despite the *Meddaugh* case, that interprets the DWI statutes as requiring these mandatory jail/fine sanctions, it is not clear whether such sanctions are mandatory given other statutory provisions. As a result, it may be possible for a defendant to receive either (1) community service in lieu of fine/jail or (2) "home detention" in lieu of imprisonment. See Footnote No. 4 below and "Other" on p. 3-534.
[4]Community service may be imposed (1) in lieu of certain fines/forfeitures or (2) in addition to other penalties. See §346.65(2g) for details. If a court sentences a defendant to imprisonment in the county jail, the court may provide that the defendant perform community service instead of jail. Three (3) days of community service is considered one (1) day in jail. Both the defendant and the organization receiving the service must agree to any community service order issued by the court. §973.03(3) The law is not clear as to whether the defendant is able to serve community in place of any minimum mandatory period of confinement (jail).
Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. McMaster,* 543 N.W.2d 499 (Wisc.App. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:	See Footnote No. 4 on p. 3-531.
Amount ($ Range):	Non-injury related DWI offs: 1st off-**$150 to $300** (See Footnote No. 1 on p. 3-531.); 2nd DWI off (w/n 10 yrs)-**$300 to $1,000**; 3rd off -**$600 to $2,000**; 4th off-**$600 to $2,000**; 5th and sub offs-**$600 to $2,000**; Injury related DWI offs, Without great bodily harm-**$300 to $2,000**; With great bodily harm (Cl D felony)-Not more than **$10,000** (Not more than $20,000 if transporting a person <16 yrs old or an unborn child) Persons Under 21 Years Old. Sec. 346.63(2m) prohibits any person under 19 years old from operating a motor vehicle with a BAC/BrAC >0.00 but <0.10. There is a forfeiture of **$10** for a violation of this provision. (**Child Endangerment:** The forfeiture is $20 if the driver was transporting a child <16 yrs old.) §346.65(2q)
Mandatory Min. Fine ($):	Non-injury related DWI off: 1st off-**$150**; 2nd off-**$300**; 3rd off-**$600**; 4th off-**$600**; 5th and sub. offs-**$600**; Injury Related DWI off (without great bodily harm)-**$300** See the Comment in Footnote No. 3 on p. 3-531.
Other Penalties:	
Community Service:	**Yes**[1] §346.65(2g) See Footnote No. 4 on p. 3-531.
Restitution (eg Victim's Fund):	**Yes** Direct compensation by the defendant to a victim for some types of "pecuniary losses". §346.65(2r)(a) In addition, the State has a victims' compensation fund. §949.01 et seq. Awards are limited to $40,000 for any one injury or death. §949.06(2) **Special Note:** An adult passenger may not receive an award from this fund if they knew the driver they were riding with was intoxicated or had an illegal per se level. §949.08(2)(e)
Other:	**Surcharges.** Persons convicted of a DWI offense must pay a driver improvement surcharge of $340 in addition to any other fine, forfeiture or assessment that may be imposed. §346.655(1) In addition, under §§814.60 & 973.045, a defendant must pay a crime victim and witness assistance surcharge of $30 for a misdemeanor conviction and $50 for a felony conviction. **Home Detention.** In lieu of imprisonment in the county jail, a defendant may be sentenced to "home detention". This detention is to be monitored by an electronic device worn by the defendant. §973.03(4)(a) The law is not clear as to whether this would apply to that portion of a sentence for which the person is to serve a minimum mandatory period of time in jail. **Traffic Safety School.** A defendant may be required to attend a "traffic safety school". §345.60(3) **Visitation Program.** Offenders, who have been convicted of an injury related drunk driving offense under §346.63(2), may be required to visit places that are concerned with the care and treatment of persons who have a substance abuse problem or who are being treated for drunk driving related injuries (e.g., alcoholism treatment facilities, hospital emergency rooms, etc.). §346.65(2i)

[1]If the defendant was transporting a person <16 yrs old, community service may consist of service benefiting children or demonstrations concerning the adverse effects that drunk driving offenses have on children. §346.65(2g)(c)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-531.
Administrative Per Se Law:	**Yes** I. If the person has had one or no prior DWI offense convictions or refusals, the admin. action is based on a "prohibited alcohol concentration" ≥**0.10**. **Susp 6 mos** (not mand)[1] II. If the person has had two or more previous DWI offense convictions or refusals, the admin. action is based on a "prohibited alcohol concentration" ≥**0.08**. **Susp 6 mos** (not mand)[1] Note: For alcohol concentration standards, see Footnote No. 1 on p. 3-529. §§340.01(46m) & 343.305(7) & (8)
Other:	A person is referred to the licensing agency after two or more DWI arrests. §343.16(2)
Post DWI Conviction Licensing Action:	See Child Endangerment on p. 3-535.
Type of Licensing Action (Susp/Rev):	1st off-**Rev**; 2nd and sub. offs-**Rev**; DWI injury related offs, with or without great bodily harm-**Rev** §§343.10, 343.30 & 343.31 Persons Under 19 Years Old. BAC/BrAC >0.00 but <0.10-**Susp** §§343.30(1q) & 346.63(2m)
Term of License Withdrawal (Days, Months, Years, etc.):	Non-injury related DWI offs; 1st off-**Rev 6 to 9 mos**; 2nd off (w/n 10 yrs)-**Rev 1 yr-18 mos**; sub off (w/n 10 yrs)-**Rev 2 to 3 yrs** Note: A previous conviction includes refusals. Injury related DWI offs Without great bodily harm - **Rev 1 to 2 yrs**; With great bodily harm - **Rev 2 yrs** (**Child Endangerment/Unborn Child:** Rev for 4 yrs if the driver was transporting a person <16 yrs old or an unborn child. §343.31(3)(f)) Persons Under 21 Years Old. BAC/BrAC >0.00 but <0.10-**Susp-3 mos** (**Child Endangerment:** Susp for 6 mos if the driver was transporting a person <16 yrs old.) §§343.30(1q) & 346.63(2m)
Mandatory Minimum Term of Withdrawal:	Non-injury related DWI offs; 1st off - **None**[1]; 2nd off - **60 dys**[2]; sub off - **90 dys**[2] Injury related DWI offs Without great bodily harm - **60 dys**; With great bodily harm - **120 dys** Persons Under 21 Years Old. BAC/BrAC >0.00 but <0.10-**None** (An occupational license is available.) §346.63(2m)

[1]A restricted occupational license is available via the courts at any time. §§343.10(4), 343.30(1q)(b)(2) & 343.305(8)(d) This license is valid for the duration of the suspension or revocation period and, after such license expires, the persons may obtain a regular license. §§343.10(5) & 343.38 A person is not eligible for an occupational license if their license has been either suspended or revoked for another offense within one (1) year. §343.10(2)(a)1

[2]A restricted occupational license may be issued after this period of time. For subsequent offenses, the restricted license shall prohibit the person from operating vehicle with any alcohol concentration (BAC/BrAC=0.00). §343.10(5)(a)2 Note: Under §343.30(1q)(h), the license susp/rev period for a DWI offense conviction is reduced by any susp time imposed for a refusal (based on the same incident/occurrence). Also, license suspensions/revocations for DWI, refusal or admin. per se which are based on the same incident/occurrence must run concurrently. §343.305(10)(g)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	
Rehabilitation:	
Alcohol Education:	**Yes** Persons who are either convicted of a DWI related injury offense (without great bodily harm) or refuse to submit to a chemical test under the implied consent law must submit to an alcohol assessment and comply with a driver safety plan. This plan may include a component concerning the effect that DWI offenses have had on either victim or a victim's family. License suspension if a person does not comply with an alcohol/drug assessment (DWI screening), education or treatment program. §§343.30(1q)(c) & (d) and 343.305(10)(d)
Alcohol Treatment:	**Yes** See above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Forfeiture.** For a 3rd offense drunk driving offenses, a person's vehicle may be **forfeited**. For a 4th or sub. offense, a person's vehicle shall be **forfeited**. §§343.305(10m) & 346.65(6)[1]
Terms Upon Which Vehicle Will Be Released:	
Other:	If a 3rd offender has had 2 prior drunk driving convictions w/n 10 yrs, any vehicles owned by them may be **immobilized, forfeited or equipped with an ignition interlock device**[2]. A vehicle cannot be immobilized for a period longer than the period of license revocation. However, a vehicle is not to be immobilized or equipped with an ignition interlock device if it would cause undue hardship, extreme inconvenience or endanger the health or safety of a person. §§346.65(6)(a)[1] & 940.25(1d)

[1]The forfeiture law, §346.65(6), has been held constitutional on both double jeopardy and due process of law grounds. *State v. Konrath,* 577 N.W.2d 601 (Wis. 1998) In this case, the court emphasized that its decision was limited to vehicles that were used in the offense. 577 N.W.2d at 614
[2]The court can only order the use of an ignition interlock device for ≤2 yrs. §346.65(6)(m)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of an intoxicant (an alcohol concentration, based on percent by wgt. of alc. in the blood and grams of alc. per 210 liters of breath, ≥0.04 is *prima facie* evidence), any drug, a controlled substance or any combination of them, (3) under the influence of any drug which render them incapable of driving safely or (4) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has an alcohol concentration >0.0 must be placed "out-of-service" for 24 hours and pay a forfeiture of $10. Any person who operates a CMV with an alcohol concentration of between 0.04 and 0.10 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.) is subject to the following criminal sanctions. For non-injury offs: 1st off-forfeiture of $150 to $300; 2nd off (w/n 10 yrs)-jail 5 dys to 6 mos, fine-$300 to $1,000; 3rd or sub off-jail 30 dys to 1 yr, fine-$600 to $2,000. (**Child Endangerment:** If the CMV operator was transporting persons <16 yrs old, the minimum and maximum incarceration, forfeiture and fine sanctions for non injury offenses are **doubled**. §346.65(2j)(d)) For an injury off: Jail-30 dys to 1 yr; fine-$300 to $2,000. For an off where there has been "great bodily" injury (Class D felony): Jail-not more than 10 yrs; fine-not more than $10,000 (**Child Endangerment/Unborn Child:** The maximum jail and fine sanctions are double if the offender was transporting either a person <16 yr old or an unborn child.) Note: The minimum jail and fine sanctions may be mandatory. See Footnote No. 3 on p. 3-531. §§340.01(1v), 340.01(8), 340.01(13m), 340.01(9r)(intro.), 343.305(2), 343.305(3)(a), 343.305(4), 343.305(7)(b), 343.31, 343.315, 346.63(5)(a), 346.63(6)(a), 346.63(7)(a), 346.65(2j), 346.65(3m), 346.65(2u)(a), 885.235(1)(d) & (5)(a), 939.50(3)(d) and 940.25

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions Not Included Elsewhere:	**Ignition Interlock.** For a 3rd offense where there has been two prior drunk driving offenses w/n 10 yrs, a person with a restricted license **is required** to operate vehicles equipped with an "ignition interlock" device. Such a device cannot be required longer than 2 yrs after the period of license revocation. A vehicle cannot be immobilized for a period longer than the period of license revocation. However, a vehicle is not to be equipped with an ignition interlock device if it would cause undue hardship, extreme inconvenience or endanger the health or safety of a person. §§343.10(5)(a)(3), 343.38(5), 343.39(3), 343.305(10m) & 346.65(6) **Child Endangerment.** I. For either non-injury or injury (without great bodily harm) drunk driving offenses, the maximum and minimum imprisonment, forfeiture and fine sanctions are **doubled**. §346.65(2)(f) & (3) II. For a drunk driving offenses related to great bodily injury, the maximum, imprisonment and fine sanctions are **doubled**. §§940.25(1b) III. For either non-injury or injury (without great bodily harm) drunk driving offenses, the maximum and minimum license revocation periods are **doubled**. §§343.30(1q)(b)(4m) & 343.31(3)(e)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Cl E felony Where a death, including a death to an unborn child, is caused by operating a veh with negligence; Cl B felony Where a death, including a death to an unborn child, is caused by operating a veh while under the influence of an intoxicant or with illegal per se levels (including operating a CMV ≥0.04). §§343.10, 343.31(1)(a), (3)(a) & (c), (3m)(a), 939.50, 940.09 and 940.10
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Cl E felony-Not more than **5 yrs**; Cl B felony-Not more than **60 yrs**[1] §§343.10, 343.31, 939.50, 940.09 & 940.10
Mandatory Minimum Term:	**None**
Fine ($ Range):	Cl E felony - Not more than **$10,000**; Cl B felony -**None**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	For Cl E & B felonies - **Rev** §§343.10 & 343.31
Length of Term of Licensing Withdrawal:	Cl E felony - **1 yr**; Cl B felony - **5 yrs**[1] §§343.10 & 343.31
Mandatory Action--Minimum Length of License Withdrawal:	Cl E felony - **15 dys**; Cl B felony - **120 dys** A restricted occupational license may be issued after these periods. §§343.10 & 343.31
Other:	**Special Note:** In lieu of a continuous prison sentence, a defendant

[1]**Child Endangerment/Unborn Child:** If the driver was transporting a person <16 yrs old or an unborn child, the maximum imprisonment and fine sanctions are doubled and the revocation period is 10 yrs. §§343.31(3)(c) & 940.09(1b)

Other Criminal Actions Related to DWI: (continued)

Other: (Continued)	may serve a series of periods of not less than 48 hrs nor more than 3 dys. §969.08(10)(b) & 973.03(5) I. Cl B felony off. For an offense where there has been two prior refusals or drunk driving offenses (any type) w/n 10 yrs, a person's vehicle may be **immobilized, forfeited or equipped with an ignition interlock device**. However, a vehicle is not to be immobilized or equipped with an ignition interlock device if it would cause undue hardship, extreme inconvenience or endanger the health or safety of a person. §§343.305(10m), 346.65(6) & 940.09(1d) See Footnote No. 1 on p. 3-534. II. Cl B felony off. For a 4th or sub. offense (a prior offense includes refusals and DWI offenses (any type) (w/n 10 yrs), a person's vehicle shall be **forfeited**. §§343.305(10m), 346.65(6) & 940.09(1d) See Footnote No. 1 on p. 3-534.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	
Sanction:	See Footnote No. 1.
Criminal:	
Imprisonment (Term):	Operating While Suspended-**None** Operating While Revoked-Not more than **1 yr** §343.44(2)(b)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Operating While Suspended-**$50 to $200** (forfeiture) §343.44(2)(a) Operating While Revoked-Not more than **$2,500** §343.44(2)(b)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev**[2] §343.30(1g)
Length of Term of License Withdrawal Action:	1st, 2nd or 3rd offense-Not more than **6 mos** (Rev or Susp) 4th or subsequent offense-**6 mos** (Rev)
Mandatory Term of License Withdrawal Action:	**None**[3]

[1]The criminal sanctions that apply for driving while revoked also apply to operating a CMV either after a CDL disqualification or after the issuance of a CDL out-of-service order. §343.44(1)(c), (1) (d) & (2)(b)

[2]These licensing actions only apply in situations were a person was driving while suspended, revoked or in violation of a CDL disqualification. §343.30(1q)(a) & (b) Out-of-Service Order. A person, who drives a CMV after they have received an out-of-service order, is subject to the following CDL disqualifications: 1st violation-90 dys; 2nd violation (w/n 10 yrs)-1 yr; and, 3rd or subsequent violation (w/n 10 yrs)-3 yrs. If the violation occurred while either transporting hazardous materials or driving a vehicle designed to carry 16 or more persons including the driver, the offender is subject to the following disqualifications: 1st violation-180 dys; and, 2nd or susequent violations (w/n 10 yrs)-3 yrs. Note: These disqualifications appear to be mandatory. §343.315(2)(h) & (i)

[3]For either a 1st, 2nd or 3rd offense, licensing action is discretionary with the court. However, even for a 4th or subsequent offense, the court may order a period of revocation of less than 6 mos provided it "places its reasons for ordering the lesser period of revocation on the record." §343.30(1q)(a) & (b)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked. **Historical Note:** The law concerning driving while suspended or revoked was revised in 1998. As part of this revision, the provision that provided for special sanctions for driving while suspended or revoked based on a drunk driving offense conviction was repealed. §§67 through 72 of 1997 Wisconsin Act 84 (enacted in 1998)

Other Criminal Actions Related to DWI: (continued)

Vehicle Impoundment. A vehicle owned by the offender may be impounded. The length of such impoundment is determined by the court. §344.44(4)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** §§351.01 to .11
Grounds for Being Declared an Habitual Offender:	Four or more serious offs or 12 or more minor moving violations w/n 5 yrs
Term of License Rev While Under Habitual Offender Status:	**5 yrs** §351.025(1) A hardship license[1] may be issued after 2 yrs of the rev period have passed. §351.07
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	**Misd**
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **180 dys**[2] §351.08
Mandatory Minimum Term of Imprisonment:	See Footnote No 3.
Fine ($ Range):	Not more than **$5,000**[2] §351.08
Mandatory Minimum Fine ($):	See Footnote No 3.
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**Yes** §346.71(2)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** (14 years or older)

[1]If an habitual offender is issued a hardship license, they are subject special sanctions if they commit a traffic offense while driving on such a license. For the traffic offense committed, the violator is subject to a fine that cannot exceed 200% of the maximum fine and/or not more than two (2) times the maximum jail sentence for such offense. §§351.07

[2]These sanctions are in addition to any other sanction that may be imposed for driving while license is suspended or recoked under §343.44. See also §351.11.

[3]Although there is no minimum sentence, the law states that no portion of the sentence is to be suspended. §351.08 Certain work privileges may, however, be allowed. §56.08

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1986) §§125.02(8m), 125.07(1) & 125.07(4)
Minimum Age (Years) Possession:	**21** Applies to either possession or consumption in public places unless accompanied by a parent or guardian §§125.07(1) & 125.07(4)
Minimum Age (Years) Consumption:	**21** Applies to either possession or consumption in public places unless accompanied by a parent or guardian §125.07(4)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes (Limited)** §125.035[1&2] Under this law, only a person, who provides alcoholic beverages to minors, is liable for the injures caused by these minors to third parties. The case law noted below may have been abrogated in part.[3&4]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	*Sorenson v. Jarvis,* 350 N.W.2d 108 (Wis. 1984)[5]
Dram Shop Actions-Social Hosts:	**Yes** §125.035[1&2] As noted above, under this law, only a person, who provides alcoholic beverages to minors, is liable for the injures caused by these minors to third parties. See also, *Koback v. Crook,* 366 N.W.2d 859 (Wis. 1985), which also limited liability to the actions of intoxicated minors.
Other:	**None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:	**Misd** §§125.07(2)(a) & (b) and 939.60
Term of Imprisonment:	Not more than **60 dys**
Fine ($ Range):	**$100 to $500**

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §125.12
Length of Term of License Withdrawal:	Susp-Not more than **90 dys**; Rev-at least **12 mos**

[1]The Wisconsin Supreme Court has held that §125.035 does not violate the equal protection clauses of either the Federal or State constitutions. *Doering v. Wea Insurance Group,* 532 N.W.2d 432 (Wis. 1995)

[2]Under §125.035, a person (an adult in the case considered by the court), who gives alcoholic beverages to an adult, is not liable for the injures caused by the person, who received and consumed such beverages, while intoxicated. *Greene by Schoone v. Farnsworth,* 525 N.W.2d 107 (Wis.App. 1994)

[3]Under the dram shop law, a person, even a minor, can be held liable for the damages caused by another minor while in an intoxicated condition, if they provide money for the purchase alcoholic beverages which were given to the injury causing minor. The act of providing money for the purchase of alcoholic beverages for a minor is considered an act of procuring such beverages for minor. *Miller v. Thomack,* 563 N.W.2d 891 (Wis. 1997)

[4]Under §125.035, a minor, who was injured after consuming alcoholic beverages, has no cause of action against the provider of such beverages. *Kwiatkowski v. Capitol Indem. Corp.,* 461 N.W.2d 150 (Wis.App. 1990)

[5]The holding in this case applied only to the actions of intoxicated minors.

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:	Civil Forfeiture/Misd[1] §125.07(1)(a) & (b)
Term of Imprisonment:	1st off (Forfieture)-**None**; 2nd off (w/n 30 mos) (Misd)-Not more than **30 dys**; 3rd off (w/n 30 mos) (Misd)-Not more than **90 dys**; sub off (w/n 30 mos) (Misd)-Not more than **9 mos** §§125.07(1)(b)2 & 939.60
Fine ($ Range):	1st off (Forfeiture)-Not more than **$500**; 2nd off (w/n 30 mos) (Misd)-Not more than **$500**; 3rd off (w/n 30 mos) (Misd)-Not more than **$1,000**; sub off (w/n 30 mos) (Misd)-Not more than **$10,000** §125.07(1)(b)2

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes** for 2nd and subsequent offs §125.07(1)(b)
Length of Term License Withdrawal:	1st offs - **None**; 2nd offs (w/n 12 mos) - Susp not more than **3 dys**; 3rd offs (w/n 12 mos) - Susp **3 to 10 dys**; 4th off (w/n 12 mos) - Susp **15 to 30 dys** (Also, possible **Susp/Rev** under §125.12; Susp-Not more than **90 dys**; Rev-at least **12 mos**)

Anti-Happy Hour Laws/Regulations: **No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):	**Yes** §346.935(2) & (3)
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §346.935(1) Note: Does not apply to a motor bus.

[1]A person, who sells alcoholic beverages to a minor under 18 yrs old and where the minor either dies or suffers great bodily harm as a result of consuming such beverages, is subject to the following sanctions: Jail-not more than 5 yrs; fine-not more than $10,000. §125.075

STATE:	**WYOMING**
General Reference:	Wyoming Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offence:	Under the influence of alcohol §31-5-233(b)(ii)(A)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1&2] §31-5-233(b)(i)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) a **Controlled Substance**[3] or (2) a Combination of Alcohol and Any Controlled Substance §31-5-233(b)(ii)(B) & (C)
Other:	For Commercial Motor Vehicle Operators, see p. 3-545.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**[4]
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§31-6-102(a)(i) & 31-6-108(a) (Implied consent to test for alcohol. concentration for persons under 21 yrs old where there is probable cause that they are driving with a BAC/BrAC/UrAC ≥0.02.)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §31-6-102(a)(i)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) §§31-6-105(f) & 31-6-108(k)
Other Information:	For any DWI offense, a test may be required in cases where serious bodily injury or death has resulted. §31-6-102(d)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes**
Urine:	**Yes**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Yes** §31-5-233(j) A DWI charge may not be reduced or dismissed, unless the State in open court moves or files a statement containing supporting facts to indicate that there is insufficient evidence to support the original DWI charge.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or urine alcohol concentration of 0.10 or more. §31-5-233(a) & (b)(i)

[2]Alcohol concentration is defined as either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 75 milliliters of urine. §§31-5-233(a)(i) & 31-6-101(a)(i)

[3]Includes glue, aerosol or other toxic vapor. §§31-5-233(a)(ii) & 31-6-101(a)(ii)

[4]Preliminary breath test (PBT) devices are being used by State law enforcement officers even though there is no statutory authorization for such use. The State supreme court has noted the use of PBT devices by the police but the issue of whether their use requires statutory authorization has not been presented to the court for a decision. *Nellis v. Wyoming Dept. of Transportation,* 932 P.2d 741 (Wyo. 1997)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st Refusal-**Susp 6 mos** (Mandatory); 2nd or Sub. Refusal[1]-**Susp 1 yr & 6 mos** (18 mos) (Mandatory) §§31-6-102(c), 31-6-107(a) & 31-7-105(d)(iv)(D) **Special Note:** If a person refuses to submit to chemical test but, nevertheless, pleads guilts to a DWI offense w/n 10 dys of arraignment, the susp. for refusal shall not take effect. §31-6-107(a)(iii)
Other:	**Persons Under 21 Years Old.** A person under 21 yrs old, who is arrested for driving with an alcohol concentration ≥0.02 under §31-5-234 and who refuses to submit to a chemical test under §31-6-108 is subject to a **mand license susp of 45 dys**. §31-6-108(n)(i) Limited driving privileges based on "undue hardship" are not available. §31-7-105(f)(v)(H)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off Misd - Not more than **6 mos**; Subsequent offs (w/n 5 yrs) Misd - **7 dys to 6 mos**[2]; Serious bodily injury DWI off: 1st off Misd - Not more than **1 yr**; Subsequent offs Felony - Not more than **20 yrs** §§6-10-101 and 31-5-233(e), (h) & (g)
Mandatory Minimum Term:	Subsequent DWI offs (w/n 5 yrs)-**7 dys** §31-5-233(e) **Special Note:** Under §31-5-233(g), a defendant may be allowed out of jail long enough to complete actual hrs of employment or education and a reasonable time to travel to and from his place of employment or school (i.e., work/school release program).

[1]A person is also subject to this enhanced licensing sanction if they have been convicted of a previous DWI offense. §31-6-107(a)(ii)(B)
[2]The discretionary portion of a jail sentence may be supended if the defendant agrees to pursue and complete an alcohol education and treatment program. §31-5-233(e)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Glasrud v. City of Laramie,* 934 P.2d 1242 (Wyo. 1997)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:	
Amount ($ Range):	1st off - Not more than **$750**; Subsequent offs - **$200 to 750**; Serious bodily injury DWI off - 1st off - Not more than **$5,000**; subsequent off - not more than **$10,000** §§6-10-101 & 6-10-102 Note: A surcharge of $50 is assessed against convicted DWI offenders. This surcharge is used to help finance the Victims' Compensation fund. §1-40-119
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	**Possible** Community service may be required as a condition of probation. §7-13-304
Restitution (eg Victim's Fund)	**Yes** (1) The defendant may be ordered to pay restitution to a victim. §7-9-102 (2) The State has a Victims' Compensation Act. §1-40-102 et seq.
Other:	**Cost of Incarceration.** A DWI offender, who has been sentenced to confinement, may be required to pay the local government for the cost of their incarceration. This requirement does not apply if the offender does not have the ability to pay for such cost. §7-13-109

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-542.
Administrative Per Se Law:	**Yes** ≥**0.10 BAC/BrAC/UrAC** (For standards, see Footnote No. 2 on p. 3-541.) **Susp 90 dys**[1&2] (For a subsequent action w/n 5 yrs, this susp is mandatory.) §§31-5-1205(k), 31-6-101(a)(i), 31-6-102(e), 31-6-103(b), 31-7-105(d) & 31-7-138 **Special Note:** There appears to be a conflict between §§31-6-103(b) and 31-7-105(d). Section 31-6-103(b) (See the last sentence.) seems to grant the licensing agency (hearing examiner) the authority to provide for limited driving privileges in hardship situations to persons who have submitted to an implied consent test and who are found to be in violation of the admin. per se provisions (§31-6-102(e)). However, §31-7-105(f)(iv)(D) clearly states that no such limited privileges are to be granted to a person who has had their driver's license suspended under §31-6-102.
Other:	**Persons Under 21 Years Old.** A person, who is under 21 years old, is subject to administrative suspension of their driver's license, if they operate a motor vehicle with an alcohol concentration ≥**0.02**. (See Footnote No. 2 on p. 3-541.) §31-5-234 1st violation-**30 dy susp**; 2nd violation[3] (w/n 3 yrs)-**60 dy susp**; 3rd or subsequent violation[3] (w/n 3 yrs)-**90 dy susp** §31-7-128(h) An offender is eligible for hardship driving privileges. However, such privileges can only be granted once w/n a 5 yr period. §31-7-105(f) Nevertheless, such privileges cannot be granted if the offender refused to submit to a chemical test under §31-6-108. §31-7-105(f)(v)(H)

[1]For a 1st admin. per se action, the 90 day suspension may be modified to allow for limited driving privileges in hardship situations. §§31-6-103(b) & 31-7-105(d)(ii)
[2]See Footnote No. 1 on p. 3-544.
[3]For purposes of license sanction enhancement, a previous violation includes a drunk driving conviction. §31-7-128(h)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): 1st off-**Susp**; 2nd off (w/n 5 yrs)-**Susp**; 3rd & Sub. offs (w/n 5 yrs)-**Rev**; DWI Serious bodily Injury offs-**Rev** §§31-7-105(d), 31-7-127(a)(ii) & 31-7-128(b)

Term of License Withdrawal (Days, Months, Years, etc.): 1st off - **90 dys**[1]; 2nd off (w/n 5 yrs) - **1 yr**[1]; 3rd & subsequent offs - **3 yrs**[1]; DWI Serious bodily injury offs - See the comment below.

Mandatory Minimum Term of Withdrawal: 1st off - Hardship driving privileges are available[2]; see Rehabilitation; 2nd off (w/n 5 yrs) - **1 yr**[2]; 3rd & subsequent offs (w/n 5 yrs) - **3 yrs**[2]; DWI Serious bodily injury offs - See the Comment below.

Comment on DWI Serious Bodily Injury Offenses: A conviction for a DWI serious bodily injury offense results in mandatory license revocation action. §31-5-233(h)(iii) However, Wyoming law does not provide specific guidance as to the revocation periods for either first or subsequent offenses.

I. For a first offense, the law establishes no clear period of mandatory license revocation. The mandatory one (1) year license revocation provisions of §31-7-127(a)(i) & (b) would not apply to a first conviction for a DWI serious bodily injury offense as such offenses are not felonies. This section provides for a one (1) year mandatory license revocation for any felony conviction related to the operation of a motor vehicle. However, a felony is defined as any offense for which a person may be sentenced to serve more than one (1) year in prison. §6-10-101 But, a first DWI serious bodily injury offense conviction, the maximum prison term is only one (1) year. §31-5-233(h)(i) Thus, this offense is not a felony. Of course, the three (3) year mandatory license revocation for DWI convictions (§31-5-233 convictions) under §31-7-127(a)(ii) would only occur if this is a third or subsequent offense committed within a five (5) year period. See II below. As a result, the law does not appear to provide for a specific license revocation period for a first DWI serious bodily injury offense.

[1]A person convicted of a DWI offense shall have the suspension period for this offense reduced by 90 days if such person was also subject to a suspension under the admin. per se law. §31-6-102(e)

[2]**Limited Driving Privileges.** A person, who has had their license suspended, may be granted limited-driving privileges based on "undue hardship". Such privileges can only be granted once in a 5 yr period. In addition, such privileges cannot be granted to anyone either who has been convicted of a drunk driving offense w/n a 5 yr period or who has had their driving privileges revoked. For drunk driving law violators, these privileges can only be granted on the condition that the offender agrees to pursue and complete either an alcohol education or treatment program. §31-7-105(f)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Comment (continued):
II. As far as mandatory license revocations for subsequent offenses are concerned, the issue is whether a conviction for such an offense will result in either a one (1) year or a three (3) year period of revocation. Subsequent convictions for DWI serious bodily injury offenses are felony convictions since a defendant may be sentenced to serve up to 20 years in prison. §§6-1-101 & 31-5-233(h)(ii) Consequently, a license would be revoked for at least one (1) year as noted above under §31-7-127(a)(i) & (b). However, as also noted above, if three (3) or more subsequent DWI convictions occur within a five (5) year period, a license could, it appears, be revoked for three (3) years. Note: Section 31-7-127(a)(ii) does not distinguish between subsequent "regular" and subsequent serious bodily injury DWI offenses for license revocation purposes. As such, it appears that the three (3) year license revocation period applies to both types of offenses.

Other:
Rehabilitation:
Alcohol Education:

Yes 1. The court may suspend part or all of the discretionary portion of an imprisonment sentence under §31-5-233(e) if the defendant agrees to pursue and completes an alcohol education or treatment program as prescribed by the court.
2. In order to obtain hardship driving privileges, the defendant must agree to pursue and complete an alcohol education and treatment program as the driver licensing agency prescribes. §31-7-105(d)

Alcohol Treatment:

Yes See Alcohol Education above.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 75 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration. Note: The disqualification provision (§31-17-111) applies only to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent provision (§31-17-113) applies to refusals to submit to chemical tests for both an alcohol concentration and the presence of controlled drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any alcohol in their system must be placed "out-of-service" for 24 hours. Note: It appears to be a misdemeanor offense for a person to operate a CMV while having any alcohol in their system. The sanctions for this offense would seem to be an imprisonment term of not more than 90 dys and/or a fine of not more than $750 for a 1st offense and an imprisonment term of not more than 6 mos and/or a fine of not more than $750 for a subsequent one. §§31-7-102(a)(ii), (vi), (viii), (xiii) & (xxxii), 31-7-136, 31-7-305, 3-7-306 and 31-7-307

Sanctions Following a Conviction for a DWI Offense:
(continued)

Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	For a subsequent DWI conviction (w/n 2 yrs), a defendant's veh registration shall be suspended for the same period as their license rev/susp. §31-7-128(c)
Miscellaneous Sanctions Not Included Elsewhere:	**None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:	**Yes** There are two types of offenses. 1.) Death caused by operation of a veh in violation of the motor vehs laws regulating traffic control **Misd** 2.) Aggravated veh homicide if death caused via DWI **Felony** §§6-2-106 & 6-10-101
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	1.) Death by a violation of the motor veh laws - Not more than **1 yr**; 2.) Aggravated veh homicide if death caused via DWI - Not more than **20 yrs**
Mandatory Minimum Term:	**None**
Fine ($ Range):	1.) Death caused by a violation of the motor veh laws - Not more than **$2,000** 2.) Aggravated veh homicide via DWI - **None**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §§6-2-106(c), 31-7-105(d)(iv)(A), 31-7-127(a)(vii) & 31-7-127(b)
Length of Term of Licensing Withdrawal:	**1 yr**
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr** See Limited Driving Privileges under Footnote No. 2 on p. 3-544.
Other:	**None**

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. 1.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd** - Not less than **7 dys** not more than **6 mos** §31-7-134(c)
Mandatory Minimum Term of Imprisonment:	**7 dys**[2] §31-7-134(c)
Fine ($ Range):	Not less than **$200** nor more than **$750** §31-7-134(c)
Mandatory Minimum Fine:	**$200** §31-7-134(c) Note: The minimum fine appears to be mandatory.
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp or rev**
Length of Term of License Withdrawal Action:	The original susp or rev period is extended **1 yr**. §31-7-134(b)
Mandatory Term of License Withdrawal Action:	The original susp or rev period is extended **1 yr**.[3] §31-7-134(b)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

[1]There appears to be no specific statutory provision that prohibits a person from operating a CMV during either a CDL disqualification or a CDL out-of-service order. However, the general statutory prohibition (§31-7-134) against driving while license is suspended or revoked may apply. Notwithstanding, a person, who has been convicted of violating a CDL out-of-service order, is subject to the following disqualification periods: 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub off (w/n 10 yrs)-3 yrs (mand) to 5 yrs. However, the following disqualification periods apply if the violation occurred while operating a CMV which is transporting hazardous materials or which is designed to carry > 15 persons: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 yrs (mand) to 5 yrs. §31-7-305(g)

[2]If the offender is under 21 yrs old and their alcohol concentration for the drunk driving offense was between 0.02 and 0.10, they are not subject to the mand 7 dy jail term but, are instead subject to a mand administrative license susp for 30 dys. §31-7-134(c)

[3]**Comment:** A person, who has had their suspension period extended, may be eligible for hardship driving privileges. See Limited Driving Privileges under Footnote No. 2 on p. 3-544.

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §12-6-101(a) & (c) (Year Eff: 1988)
Minimum Age (Years) Possession:	**21** Applies to possession in a public place. There are exemptions for either employment or by order of a parent. §12-6-101(b)
Minimum Age (Years) Consumption:	**None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** Limited[1&2] §12-8-301
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** Note: Case law, *McClellan v. Tottenhoff,* 666 P.2d. 408 (Wyo. 1983), was apparently indirectly abrogated by §12-8-301[1]
Dram Shop Actions-Social Hosts:	**Yes Limited** Social hosts who serve alcoholic beverages illegally, such as to persons who are under 21 years old and who are not their child or ward, etc., may be liable for the resulting damages. §12-8-301(c)[1]
Other:	**None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:	**Misd** Limited Application[3] Under §§12-5-301(a)(v) & 12-8-101, it is illegal for licensees to sell sealed packages of alcoholic beverages to intoxicated persons in certain "drive-in areas."
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$750**

[1]Sec. 12-8-301(a) specifically prohibits dram shop type actions against anyone (e.g., licensees and social hosts) who has legally served or furnished alcoholic beverages to another person. Dram shop liability only applies if the person serving or furnishing such beverages violates Title 12, Alcoholic Beverages, of the Wyoming Statutes.
[2]Under §12-5-502, a licensee, who serves alcoholic beverages to an habitual drunkard after having been notified not to do so, may be held liable for the support of the habitual drunkard's spouse or dependant.
[3]Previous law, §12-5-501, concerning the selling of alcoholic beverages to intoxicated persons generally, was repealed.

Other State Laws Related to Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** §12-7-101 Limited Application[1] See §12-5-301(a)(v) and the statement above under criminal sanctions.
Length of Term of License Withdrawal:	A susp is not to exceed the balance of the term for which the license was issued; as for rev, no time period is specified in the statute. §12-7-102

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:	**Misd** §§12-5-301, 12-6-101 and 12-8-101
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$750**

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes Susp** or rev where there is gross violation of the law
Length of Term License Withdrawal:	A susp is not to exceed the balance of the term for which the license was issued; as for rev, no time period is specified in the statute. §12-7-102

Anti-Happy Hour Laws/Regulations: **No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**No**

[1]See Footnote No. 3 on p. 3-548.

APPENDIX A

ITEM:	**UNIFORM VEHICLE CODE** (UVC)
Reference:	The UVC as revised by the National Committee on Uniform Traffic Laws and Ordinances in 1992.
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of alcohol §11-902(a)(2)
Illegal Per Se Provision (BAC/BrAC):	≥**0.08**[1&2] §§11-902(a)(1) & 11-903(a)(5)
Presumption (BAC/BrAC):	≥**0.08**[2] §11-903(b)(2)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**[3], (2) a Combination of Drugs[3] or (3) a Combination of Alcohol and Drugs[3] §11-902(a)(3) & (4)
Other:	For Commercial Motor Vehicle Operators, see below.
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Provision:	**Yes** §6-209
Implied Consent Provision: Arrest Required (Yes/No):	**No** A formal arrest is not required in all DWI situations. A request for a chemical test under the implied consent provisions may be made under the following conditions where there is evidence showing probable cause of a DWI offense and one of the following exists: (1) an arrest for a DWI offense; (2) an accident; (3) a refusal to submit to preliminary breath test; or, (4) a preliminary breath test was administered and indicates an alcohol concentration ≥0.08[2] (for persons under 21 years old, an alcohol concentration ≥0.02[2]). §§6-207(a) and 6-208(a) & (b)
Implied Consent Provision Applies to Drugs (Yes/No):	**Yes** §§6-207(a) & 6-208(b)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §11-903(c)
Other Information:	A driver may be compelled to submit to a chemical test if they are involved in an accident resulting in either death or serious personal injury to another person and there is reason to believe that they are guilty of a DWI offense. §6-210

[1]The UVC's illegal per se provision also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.
[2]Under §§6-500(1) and 11-903(a)(5), "alcohol concentration" means "either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath."
[3]Which renders such a person incapable of safely driving.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥0.04 (For alcohol concentration standards, see Footnote No. 2 above.), (2) are under the influence of alcohol or any drug or (3) refuse to submit to a chemical test for either an alcohol concentration or the presence of drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§6-500, 6-514, 6-516 & 6-517

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Provision:

Blood:	**Yes** §§6-207(a) & 6-208(b)
Urine:	**Yes** §§6-207(a) & 6-208(b)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Provision (Yes/No):	**No**
Anti-Plea Bargaining Provision (Yes/No):	**No** However, the prosecution must state for the record the factual basis for substituting another charge for a DWI one and whether an alcoholic beverage or any drug has been ingested by or administered to the defendant in connection with the offense. §11-905
Pre-Sentencing Investigation Provision (PSI) (Yes/No):	**Yes** Alcohol & Drug Screening Required §11-904(a) **Special Note:** Prior to sentencing, either an oral or a written victim's impact statement may be made to the court. §11-1502(d)

Sanctions for Refusal to Submit to a BAC Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Suspension/Revocation):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Suspension/Revocation):	**Rev 6 mos/1 yr** §§6-207(c), 6-208(d) & 6-214(a)(1) The UVC recommends that either a 6 month or a 1 year revocation period be adopted by the States as a licensing sanction for an implied consent law refusal. See Footnote No. 3 on p. A-3.
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off-Misd[1]-**10 dys to 1 yr**; 2nd & sub. off-Misd[1]-**90 dys to 1 yr** §11-902(c)
Mandatory Minimum Term:	**None**[2]

[1]Since §11-902 does not declare that a DWI offense (either a 1st or a subsequent offense) is a felony, it is a misdemeanor via the provisions of §17-101.

[2]Under §17-103(c), a court may probate or suspend sanctions for any misdemeanor traffic offense unless such penalties are made specifically mandatory by other provisions.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:	
Amount ($ Range):	1st off-Misd-**$100 to $1,000**; 2nd & sub. off-Misd-Not more than **$1,000** §11-902(c)
Mandatory Min. Fine ($):	**None**[1]
Other Penalties:	
Community Service:	Possible as a condition of either probation or suspension of a DWI imprisonment sanction. §17-103(b)
Restitution (eg Victim's Fund):	**Yes** Paid by the defendant to a victim via a court order. §11-1502(e) Such payment is also possible as a condition of either probation or suspension of a DWI imprisonment sanction. §17-103(b)
Other:	Attendance and satisfactory completion of a driver improvement course may be ordered by the court. §17-103(a)(3)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Provision:	**Yes BAC/BrAC ≥0.08** (≥0.02 for persons under 21 years old[2]) (For alcohol concentration standards, see Footnote No. 2 on p. A-1.)-**Rev 3 mos/6 mos**[3&4] The UVC recommends, that for an admin. per se violation, the States revoke a license for either 3 or 6 mos. §§6-207(d), (e) & (f), 6-208(d), (e) & (f) and 6-214(a)(2)
Other:	Under §§6-211(a)(1) & 6-216, a person's license may be **suspended** for **not more than 1 yr** if they have "committed" an off that requires mandatory license revocation (e.g. DWI). **Comment:** Such action could occur prior to a conviction.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Suspension/Revocation):	**Rev** (1st and subsequent offenses) §6-206(2) **Special Note:** If a person receives revocations for both an admin. per se violation and for a DWI conviction based on the same occurrence, the total revocation period that shall be imposed cannot exceed the longer of the two revocation periods. §6-214(d)
Term of License Withdrawal (Days, Months, Years, etc.):	**1 yr** (1st and subsequent offenses) §6-214(a)(3), (4) or (5)

[1]Under §17-103(c), a court may probate or suspend sanctions for any misdemeanor traffic offense unless such penalties are made specifically mandatory by other provisions.

[2]Sec. 6-208(e) & (f) provides that a person under 21 years old is subject to administrative license revocation if they operate a motor vehicle with "any measurable or detectable amount" of alcohol. Sec. 6-208(a) defines "any measurable or detectable amount" of alcohol as an alcohol concentration ≥0.02.

[3]Under §6-215, a limited license may be issued after 30 days of the revocation period have passed. The limited license can only be issued if (1) no prior limited license has been issued within the preceeding 12 months and (2) there have been no prior revocations. This section imposes no specific restrictions on a person's use of this license. However, it does grant the licensing agency the authority to impose any conditions or limitations on the use of such license as it deems are needed for the public's safety.

[4]**Comment:** It may be possible for persons under 21 years old, who have violated the administrative per se law, to receive a 1 yr revocation. Sec. 6-214 does not list a special licensing sanction for the violation of the administrative per se provisions of persons under 21 years old via §6-208; likewise, §6-208 does not by itself provide for any specific period of license revocation. Thus, the general 1 yr license revocation provision of §6-214 may apply.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of Withdrawal:	See Footnote No. 3 on p. A-3 and Miscellaneous Sanctions below.
Other:	
Rehabilitation:	
Alcohol Education:	
Alcohol Treatment:	**Yes** (1st and sub. off) §11-904(b)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Provisions:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	Following a conviction for "driving or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug", a defendant may have their vehicle(s) registration(s) suspended. Note: The UVC does not specify a length of time for such suspension. §17-301(2)
Miscellaneous Sanctions Not Included Elsewhere:	After the revocation period, a new license shall not be issued until the person satisfies the State licensing agency that it is reasonably safe to permit them to drive. §6-214(b)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
UVC Has Such a Provision:	**Yes** Misd or Felony[1] §11-906(a)
Criminal Sanction:	
Imprisonment (Term):	**3 mos to 1 yr** in the county jail or not less than than **1 yr** nor more than **5 yrs** in the penitentiary §11-906(b)
Mandatory Minimum Term:	**None** See Footnote No. 1 on p. A-5.
Fine ($ Range):	**$500 to $2,000** §11-906(b) Note: The fine sanction does not apply if the penitentiary imprisonment sanction is imposed.

[1]**Comment:** It appears that a UVC vehicle homicide offense could be classified as either a misdemeanor or a felony depending upon whether respectively a defendant is given the county jail sanction (3 mos to 1 yr) or the penitentiary one (1 to 5 yrs). At first impression, it would seem that a vehicle homicide offense should be classified as a misdemeanor under §17-101(a) since §11-906 is silent as to such classification. However, if certain general principles of criminal law as well as other UVC provisions are applied, UVC vehicle homicide could be classified as either a misdemeanor or a felony depending upon how long and where a defendant is to be incarcerated. In brief, using these general principles, a crime is classified as a misdemeanor if an incarceration sanction does not exceed one year and/or such is to be served in a county (or local) jail. A crime is classified as a felony if an incarceration sanction is greater than one year and/or such must be served in a State penitentiary. Thus, under these principles, it is possible that an offense, such as UVC vehicle homicide, could have a dual classification (misdemeanor or felony) depending upon the type of incarceration sanction imposed by the court. See 21 Am Jur 2d, Criminal Law, §29 and the definitions of misdemeanor and felony in Black's Law Dictionary, Sixth Edition, 1990. Further support for dual classification comes from the UVC itself. Under §17-201, the UVC's general felony penalty provision, a person convicted of a felony is to be sentenced to a term of imprisonment of not less than 1 yr nor more than 5 yrs. This sanction is identical to one of the sanctioning options under §11-906(b). Thus, although there is no specific language on this matter, it seems only reasonable to conclude that the UVC would classify a vehicle homicide offense as a felony if a defendant is given such an incarceration sanction. To classify a vehicle homicide as a misdemeanor when the sanction imposed on a defendant is the same as for a general UVC felony offense would render the UVC inconsistent in sanctioning and classification matters. Such a result does seem warranted if a more logical classification/sanctioning scheme can be justified.

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine:	**None**[1]
Fine ($ Range):	**$500 to $2,000** §11-906(b) Note: The fine sanction does not apply if the penitentiary imprisonment sanction is imposed.
Mandatory Minimum Fine:	**None**[1]
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §6-206(1)
Length of Term of Licensing Withdrawal:	**1 yr** §6-214(a)(3), (4) or (5)
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr** §§6-206 & 6-214(a)(3), (4) or (5) See Footnote No. 3 on p. A-3.
Other	For a vehicle homicide conviction, a defendant may have their vehicle(s) registration(s) suspended. Note: The UVC does not specify a length of time for this suspension. §17-301(1)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*: See Footnote No. 2.

Sanctions:	
Criminal:	
Imprisonment (Term):	**Misd 2 dys to 6 mos** §6-303(a)
Mandatory Minimum Term of Imprisonment:	**None**[1]
Fine ($ Range):	Not more than **$500** §6-303(a)
Mandatory Minimum Fine:	**None**[1]
Administrative Licensing Actions:	
Type of Licensing Action (Suspension/Revocation):	**Susp/Rev** §6-303(b)
Withdrawal Action:	**1 yr** from and after the date the period of suspension or revocation would otherwise have terminated. §6-303(b)
Mandatory Term of License Withdrawal Action:	**None** The additional period of suspension or revocation is discretionary. §6-303(b)
Other:	Following a conviction of driving while their license is suspended or revoked, a defendant may have their vehicle(s) registration(s) suspended. Note: The UVC does not specify a length of time for this suspension. §17-301(6)

Habitual Traffic Offender Provision:

UVC Has Such a Provision (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	

[1]Under §17-103(c), a court may probate or suspend sanctions for any misdemeanor traffic offense unless such penalities are made specifically mandatory by other provisions.

[2]The UVC appears to make it a misd to operate a CMV either following CDL disqualification or while under a CDL out-of-service order. However, the UVC makes no recommendations as to either the types of or the severity of the sanctions that should be imposed for this offense. §§6-508(b) & 17-101

*There is no specific provision in the UVC on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Term of License Revocation While Under Habitual Offender Status:
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status
Sanctions Following a Conviction of Driving While on Habitual Offender Status:
Imprisonment (Term):
Mandatory Minimum Term of Imprisonment:
Fine ($ Range):
Mandatory Minimum Fine ($):
Licensing Actions (Specify):

Other UVC Provisions Related To Alcohol Use:

Provisions Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

UVC Has Such a Provision (Yes/No):	**Yes** §10-116
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** §10-116(a)
Vehicle Passengers:	**No**
Pedestrian:	**Yes** For persons at least 16 years old §10-116(a) & (b)

Provisions Establishing the Minimum Ages Concerning Alcoholic Beverages: See Footnote No. 1.
Minimum Age (Years) Sale/Purchase:
Minimum Age (Years) Possession:
Minimum Age (Years) Consumption:

Dram Shop Provisions and Related Legal Actions:

UVC Has a Dram Shop Provision (Yes/No):	See Footnote No. 1.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the Case (Case Citation):	**N/A**
Dram Shop Actions-Social Hosts:	See Footnote No. 1.
Other:	

[1]This area of the law is not normally covered by UVC.

Other UVC Provisions Related To Alcohol Use:
(continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	See Footnote No. 1.
Term of Imprisonment:	
Fine ($ Range):	
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	See Footnote No. 1.
Length of Term of License Withdrawal:	
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	See Footnote No. 1.
Term of Imprisonment:	
Fine ($ Range):	
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	See Footnote No. 1.
Length of Term License Withdrawal:	
Anti-Happy Hour Provisons:	See Footnote No. 1.
Provisions Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Provision (Yes/No):	**No**
Anti-Consumption Provision (Yes/No):	**No**

[1]This area of the law is not normally covered by UVC.

APPENDIX B

STATE:	**MICHIGAN** (as of 10/1/99)
General Reference:	Michigan Compiled Laws Annotated and Michigan Liquor Control Code (MLCC) of 1998*

Basis for a DWI Charge:

Standard DWI Offense:	1) Visibly impaired by intoxicating liquor §257.625(3) 2) Under the influence of intoxicating liquor §257.625(1)(a)
Illegal Per Se Law (BAC/BrAC):	≥**0.10**[1&2] §257.625(1)(b) Persons Under 21 Years Old. **Any Bodily Alcohol Content**[3] §257.625(6)
Presumption (BAC/BrAC):	A BAC/BrAC/UrAC **>0.07** but **<0.10**[1&2] is a presumption of impairment. A BAC/BrAC/UrAC ≥**0.10**[1&2] is a presumption of driving while under the influence. §257.625a(9)(b) & (c)
Types of Drugs/Drugs and Alcohol:	Under the influence of or visibly impaired by (1) **A Controlled Substance** or (2) a Combination of Liquor and a Controlled Substance. §§257.625(1)(a) & (3)
Other:	For Commercial Motor Vehicle Operators, see p. B-6.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §257.625a(2) For CMV operators, see §§257.319d & 257.625a(4).
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §257.625c(1)(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §257.625c(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes Limited** (Criminal cases) In driving while under the influence/illegal per se cases, evidence of a refusal to submit to a chemical test may be admitted but only "for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant." §257.625a(10)
Other Information:	**Special Note:** Following a refusal to submit to a chemical test under the implied consent law, a test (for alcohol concentration or controlled drugs) can be required via a court order. §§257.625a(6)(b)(iv) & *People v. Wurm,* 404 N.W.2d 235 (Mich.App. 1987)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §257.625c(1)
Urine:	**Yes** §257.625c(1)
Other:	**None**

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or urine alcohol concentration of 0.10 or more.
[2]Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §§257.625(1)(b) & (6)(a), 257.625a(9)(b) & (c) and 257.625g(4)
[3]The term "any bodily alcohol content" means either (1) a BAC/BrAC/UrAC of ≥**0.02 but** ≤**0.07** (For Standards, see Footnote No. 2 above.) or (2) "[a]ny presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony." §257.625(6)(a) & (b)

*Citations are to the Michigan Complied Laws Annotated unless otherwise indicated by a reference to the MLCC.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Limited** A person under 21 years old, who is charged with either with driving while under the influence, driving while visibly impaired or illegal per se offenses under §257.625(1) & (3), cannot enter a plea of either guilty or *nolo contendere* to driving with "any bodily alcohol content" under §257.625(6). §257.625(15)
Pre-Sentencing Investigation Law (PSI) (Yes/No:	**Yes**[1] Alcohol & Drug (Screening & Assessment Required) §257.625b(5)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	Civil infraction-Fine not more than **$100** §§257.625a(2)(d), 257.741 et seq. & 257.907 Note: It is a misdemeanor for a CMV operator to refuse to submit to a PBT. See DWI Offenses and Commercial Motor Vehicles on p. B-6. §§257.319d & 257.625a(4)
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1st refusal-**6 mo susp** Note: A restricted/hardship license may be issued. 2nd and subsequent refusals (w/n 7 yrs)-**1 yr susp** (mand) §§257.323c and 257.625f(1) & (4)
Other:	See "Other" under Pre-DWI Conviction Licensing Action on p. B-4.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1) Driving while visibly impaired: (1) 1st off (Misd)-Not more than **93 dys**; 2nd off (w/n 7 yrs) (Misd)-**5 dys to 1 yr**; 3rd or sub off (w/n 10 yrs) (felony)-**1 to 5 yrs**[2] §257.625(10) 2) Driving while under the influence/Illegal per se: 1st off (Misd)-Not more than **93 dys**; 2nd off (w/n 7 yrs) (Misd)-**5 dys to 1 yr**; 3rd and sub off (w/n 10 yrs) (felony)-**1 to 5 yrs**[2] §257.625(8)

[1]For offenses where a defendant may be sentenced to prison for more than 1 yr or where an offense is a felony, a victim has a right to submit a statement and have it made a part of the pre-sentence investigation report. §§780.763 & 780.764
[2]A person, who commits a 2nd felony offense, is subject to the provisions of the general criminal habitual offender law. Under this law, such an offender's imprisonment sanction may be enhanced by not more than 1½ times the longest term prescribed for a 1st felony off. §769.10(1)(a) & *People v. Bewersdorf,* 475 N.W.2d 231 (Mich. 1991)

Special Note: For the purpose of sanction enhancement, a "prior offense" includes a prior conviction for any drunk driving offense and for a previous conviction for either negligent homicide, manslaughter or murder related to any drunk driving offense. §257.625(23)

Sanctions Following a Conviction for a DWI Offense:
(continued)

	3) Any DWI offense where there is a "serious impairment of a body function"[1]-Felony-not more than **5 yrs**[2] §257.625(5) 4) Persons Under 21 Years Old. **Any Bodily Alcohol Content**-2nd or sub off (w/n 7 yrs) (Misd)-**93 dys** §257.625(11)
Mandatory Minimum Term:	1) Driving while visibly impaired: 1st off-**None**; 2nd off (w/n 7 yrs)-**5 dys (w/48 con hrs)**[3]; 3rd or sub off (w/n 10 yrs)-**1 yr or 30 dys w/48 con hrs (if probation is granted)**[4] §257.625(10) 2) Driving while under the influence/Illegal per se: 1st off-**None**; 2nd off (w/n 7 yrs)-**5 dys (w/48 con hrs)**[3]; 3rd or sub off (w/n 10 yrs)-**1 yr or 30 dys w/48 con hrs (if probation is granted)**[4] §257.625(8) 3) Any DWI offense where there is a "serious impairment of a body function"-**None** 4) Persons Under 21 Years Old. **Any Bodily Alcohol Content-None**
Fine: Amount ($ Range):	1) Driving while visibly impaired-1st off-Not more than **$300**; 2nd off (w/n 7 yrs)-**$200 to $1,000**; 3rd or sub off (w/n 10 yrs)-**$500 to $5,000** §257.625(10) 2) Driving while under the influence/illegal per se: 1st off-**$100 to $500**; 2nd off (w/n 7 yrs)-**$200 to $1,000**; 3rd or sub off (w/n a 10-yrs) -**$500 to $5,000** §257.625(8) 3) Any DWI offense where there is a "serious impairment of a body function"-**$1,000 to $5,000** §257.625(5) 4) Persons Under 21 Years Old. **Any Bodily Alcohol Content**-1st off-Not more than **$250**; 2nd and sub off (w/n 7 yrs)[1]-Not more than **$500** §257.625(11)
Mandatory Min. Fine ($):	1) Driving while visibly impaired-1st off-**None**; 2nd off (w/n 7 yrs)-**$200** (possible); 3rd or sub off (w/n 10 yrs)-**$500**[2] (possible) 2) Driving while under the influence/illegal per se: 1st off-**$100** (possible)[2]; 2nd off-**$200** (possible)[2]; 3rd off-**$500** (possible)[2] 3) Any DWI offense where there is a "serious impairment of a body function"-**None** 4) Persons Under 21 Years Old. **Any Bodily Alcohol Content-None**

[1]A "serious impairment of a body function" includes, but is not limited to, (1) the loss or use of a limb, eye, or ear, (2) loss or substantial impairment of a bodily function, (3) serious disfigurement, (4) a comatose state for more than 3 dys, (5) brain damage, (6) scull or other serious bone fracture or (7) subdural hemorrhage or hematoma. §257.625(5)
[2]A person, who commits a 2nd felony offense, is subject to the provisions of the general criminal habitual offender law. Under this law, such an offender's imprisonment sanction may be enhanced by not more than 1½ times the longest term prescribed for a 1st felony off. §769.10(1)(a) & *People v. Bewersdorf,* 475 N.W.2d 231 (Mich. 1991)
[3]The law appears to authorize a sentence of community service in addition to or in lieu of imprisonment. §257.625(8)(b) & (10)(b)
[4]This sanction appears mandatory. The law provides that a term of imprisonment for this offense cannot be suspended. I.e., an offender cannot be sentenced to community service in lieu of imprisonment. §257.625(8)(d) & (10)(d)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:
Community Service:

1) Driving while visibly impaired-1st off (Misd)-Not more than **45 dys**; 2nd off (w/n 7 yrs) (Misd)-**30 dys (mand) to 90 dys** in lieu of imprisonment; 3rd or sub off (w/n 10 yrs) (felony)-**60 dys (mand) to 180 dys** (Provided probation is granted. This sanction is in addition to the mand 30 dy jail sentence.)[3] §257.625(10)
2) Driving while under the influence/illegal per se 1st off-Not more than **45 dys**; 2nd off-**30 (mand) to 90 dys** in lieu of imprisonment; 3rd or sub off-**60 dys (mand) to 180 dys** in addition to mand imprisonment (Provided probation is granted. This sanction is in addition to the mand 30 dy jail sentence.)[3] §257.625(8)
3) Any DWI offense where there is a "serious impairment of a body function"-**None**
4) Persons Under 21 Years Old. **Any Bodily Alcohol Content**-1st off-Not more than **45 dys**; 2nd and sub off (w/n 7 yrs)-Not more than **60 dys**[1] §257.625(11)

Restitution
(eg Victim's Fund)
Other:

Yes[4]
Assessments. A person convicted of a crime must pay the following assessments. For a felony, the assessment is **$60** and for a misdemeanor it is **$50**. §780.905
Costs of Prosecution. For any drunk driving offense listed above, an offender may be required to pay the costs of prosecution. §§257.625(12) & 769.1f(1)
EMS Costs. For any drunk driving offense listed above, an offender may be required to pay the emergency response costs incurred by State or a local government as a result of such offense. §179.1f(1)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:
Other:

None
Special Note: Under §257.625g, if a driver either refuses to submit to a chemical test or if they submit to such test which indicates an "unlawful alcohol content"[5], their license is confiscated and destroyed by the police. A temporary license is issued and is valid until the conclusion of the DWI criminal proceedings.

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[1]See the Special Note on p. B-2.
[2]See *Wayne City Prosecutor v. Wayne Circuit Judge,* 397 N.W.2d 274 (Mich.App. 1986).
[3]**Comment:** In cases where probation is granted for a 3rd or subsequent offense, the law does not appear to allow for the substitution of community service for the minimum mandatory term of imprisonment.
[4]The State has a victims' compensation fund and, in addition, provides for direct compensation to victims by the defendant via court ordered restitution. §§18.351 et seq., 771.3(2)(d) and Act 341, Public Acts of 1993
[5]An "unlawful alcohol content" means either (1) a person under 21 yrs old was operating motor vehicle with a BAC/BrAC/UrAC ≥0.02, (2) a person with a CDL was operating a CMV with a BAC/BrAC/UrAC ≥0.04 or (3) a person was operating any motor vehicle with a BAC/BrAC/UrAC ≥0.10. For standards, see Footnote No. 2 on p. B-1. §257.625g(4)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:	See Footnote No. 1.
Type of Licensing Action (Susp/Rev):	1) Driving while visibly impaired: 1st off-**Susp**; 2nd off (w/n 7 yrs)-**Rev**; 3rd off (w/n 10 yrs)-**Rev** §§257.303(2) & (4) and 257.319(8) 2) Driving while under the influence/illegal per se: 1st off-**Susp**; 2nd off (w/n 7 yrs)-**Rev**; 3rd off (w/n 10 yrs)-**Rev** §§257.303(2) & (4) and 257.319(8) 3) Any DWI offense where there is a "serious impairment of a body function"-**Rev** §257.303(2)(d) & (4) 4) Persons Under 21 Years Old. **Any Bodily Alcohol Content**-1st off-**Susp**; a violation of this prohibition where there has been 2 violations of any other drunk driving law provision-**Rev**; in addition, for any offense where there has been a prior rev w/n 7 yrs-**Rev** §§257.303(2) & (4) and 257.319(8)
Term of License Withdrawal (Days, Months, Years, etc.):	1) Driving while visibly impaired: 1st off-**90 dys** (If the offense involved driving while impaired by a controlled substance or a controlled substance and alcohol-**180 dys**); 2nd off- not less than **1 yr**; any subsequent offense where there has been a prior rev w/n 7 yrs-not less than **5 yrs** §§257.303(2) & (4) and 257.319(8) 2) Driving while under the influence/illegal per se: 1st off-**180 dys**; 2nd off-not less than **1 yr**; any subsequent offense where there has been a prior rev w/n 7 yrs-not less than **5 yrs** §§257.303(2) & (4) and 257.319(8) 3) Any DWI offense where there is a "serious impairment of a body function"-1st off-not less than **1 yr**; any subsequent offense where there has been a prior rev w/n 7 yrs-not less than **5 yrs** §§ 257.303(2) & (4) 4) Persons Under 21 Years Old. **Any Bodily Alcohol Content**-1st off-**30**; a violation of this prohibition where there has been 2 violations of any other drunk driving law provision-not less than **1 yr**; for any offense where there has been a prior rev w/n 7 yrs-not less than **5 yrs** §§257.303(2) & (4) and 257.319(8)
Mandatory Minimum Term of Withdrawal:	1) Driving while visibly impaired: 1st off-**None** (A restricted/hardship license may be issued.); 2nd off-**1 yr**; any subsequent offense where there has been a prior rev w/n 7 yrs-**5 yrs**) §§257.303(2) & (4) and 257.319(8) 2) Driving while under the influence/illegal per se: 1st off-**30 dys** (A restricted hardship license may be issued after this period of time.); 2nd off-**1 yr**; any subsequent offense where there has been a prior rev w/n 7 yrs-**5 yrs** 3) Any DWI offense where there is a "serious impairment of a body function"-1st off-**1 yr**; any subsequent offense where there has been a prior rev w/n 7 yrs-**5 yrs** §§ 257.303(2) & (4)

[1]Licensing action under the point system. Vehicle manslaughter or driving while under the influence/illegal per se-6 points. Driving while impaired-4 points. Twelve (12) points in two (2) years may result in suspension/revocation. A susp cannot be longer than one (1) year. §§257.320(1)(d), (2) & (4) and 257.320a(1)(a), (b) & (f)

Sanctions Following a Conviction for a DWI Offense:
(continued)

4) Persons Under 21 Years Old. **Any Bodily Alcohol Content-**1st off-**None** (A person is eligible for restricted driving privileges.); a violation of this prohibition where there has been 2 violations of any other drunk driving law provision-**1 yr**; for any offense where there has been a prior rev w/n 7 yrs-**5 yrs** §§257.303(2) & (4) and 257.319(8)

Ignition Interlock. A person, who has had their license revoked for any drunk driving offense, may, after the mandatory revocation period, be issued a restricted license instead of full driving privileges. If a restricted license is issued, the driver is limited to operating motor vehicles that are equipped with an "ignition interlock" device. The initial period for the use of such device is 1 yr. §257.322(6), (7), (8) & (9)

Other:	
Rehabilitation:	
Alcohol Education:	**Yes** §257.625b(5)
Alcohol Treatment:	**Yes** §257.625b(5)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	Driving While Impaired, Driving While Under the Influence or illegal Per Se: 2nd or sub off-**Forfeiture** (discretionary) §257.625(8) & (10) and 257.625n See **Immobilization** under "Other" below.
Terms Upon Which Vehicle Will Be Released:	

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have violated the law that prohibits CMV operation with a BAC/BrAC/UrAC ≥0.04, (2) have violated the provisions of the drunk driving law (§257.625(1), (3), (4), (5), (6) or (7)) or (3) have refused to submit to a chemical test for alcohol concentration or the presence of controlled substances. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, a revocation for not less than 10 yrs (10 yrs mand). A person who operates a CMV with a BAC/BrAC/UrAC ≥0.04 but <0.07 commits a criminal offense: For a 1st off (Misd), the person is subject to imprisonment for not more than 93 days; a fine of not more than $300; and license susp for 90 dys (a restricted license is available for all of this period); for a 2nd off (w/n 7 yrs) (Misd), a person is subject to imprisonment for not more than 1 yr and/or a fine of not more than $1,000; and, for a 3rd off (w/n 10 yrs) (felony), a person is subject to either imprisonment from 1 to 5 yrs or county jail from 30 dys to 1 yr with 60 to 180 dys of community (the minimum imprisonment and/or community service are mand) a, a fine of $500 to $5,000 . In addition, a CMV operator who has a BAC/BrAC/UrAC ≥0.015 must be placed "out-of-service" for 24 hours. Finally, it is a misdemeanor for a person to refuse to submit to a preliminary breath test (PBT) while operating a CMV; the sanctions for this offense are imprisonment for not more than 93 dys and/or a fine of not more than $100. Note: The standards for BAC, BrAC and UrAC are respectively as follows: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §§257.1c, 257.4b, 257.7a, 257.312e, 257.319b, 257.319d, 257.625a(5) & 257.625m

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

I. Driving While Impaired, Driving While Under the Influence, Illegal Per Se, Death or Injury Drunk Driving Offense or Under Age 21 Drunk Driving Off (driving w/ any alcoholic bodily content): 1st off-**Immobilization**-Not more than **180 dys** (discretionary); 2nd off-**Immobilization** (Note: If the veh is not forfeited for the above offs, this sanction applies.)-**24 (mand) to 180 dys**; 3rd or sub off-**Immobilization** (Note: If the veh is not forfeited for above offs, this sanction applies.)-**6 mos (mand) to 3 yrs** §§257.625(8) & (10) and 257.904d

Special Note: This sanction does not apply to rental vehicles or to vehicles that are registered in another State. §257.904d(7)(c)

II. Driving While Impaired, Driving While Under the Influence, Illegal Per Se or Under Age 21 Offense Drunk Driving Off (driving w/ any alcoholic bodily content): 3rd or sub off-Where the offender's license is still suspended or revoked for these offenses-Offender shall be denied the right to either **register** a vehicle or to obtain a **title** of ownership to a vehicle. §257.219(1)(d) & (2)(d)

III. When a law enforcement officer has detained a person for an offense which requires vehicle **immobilization**, the officer must (1) confiscate the vehicle's license plate and destroy it and (2) issue a temporary plate. The temporary plate is valid for 100 dys unless extended by the court. §257.904c

Miscellaneous Sanctions
Not Included Elsewhere:

Child Endangerment. A person is guilty of a misd and is subject to the following sanctions if they commit any drunk driving off while carrying a passenger <16 yrs old: Jail-not more than 1 yr; fine-not more than $1,000; and, lic susp-180 dys (90 dys mand). Note: The above veh forfeiture/immobilization provisions apply if the offense occurred w/n 7 yrs of a prior off or w/n 10 yrs of 2 or more offenses. §§257.319(8)(e) & 257.625(7)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Felony Any DWI offense related death §257.625(4)[1]
Misd Death caused by driving at an immoderate rate of speed, in a careless, reckless, or negligent manner but not wilfully or wantonly. §750.324

Sanctions:
Criminal Sanction:
Imprisonment (Term):

Felony-Not more than **15 yrs** §257.625(4)
Misd-Not more than **2 yrs** §750.324

Mandatory Minimum Term: **None**
Fine ($ Range): Felony-**$2,500 to $10,000** §257.625(4)
Misd-Not more than **$2,000** §750.324
Mandatory Minimum Fine: **None**

[1]The Michigan Supreme Court has held that §257.625(4) is constitutional. *People v. Lardie,* 551 N.W.2d 656 (Mich. 1996)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Felony-**Rev** §§257.625b(5) Misd-**Susp** §257.319(1)(c) (6 points are also accumulated for each off §257.320a(1)(a))
Length of Term of Licensing Withdrawal:	Felony-1st off-**1 yr**; 2nd or sub. off (w/n 7 yrs)-**5 yrs** §§257.52 Misd-**90 dys-2 yrs** §257.319(1)(a)
Mandatory Action--Minimum Length of License Withdrawal:	Felony-1st off-**1 yr**; 2nd or sub. off (w/n 7 yrs)-**5 yrs** §§257.52 & 257.625b(5) Misd-**None**
Other:	See Assessments on p. B-4.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	I. 1st off (Misd)-Not more than **93 dys**; 2nd and sub offs (Misd)-Not more than **1 yr** §257.904(1) & (3) II. If the offense resulted in **death** of another person (felony)-Not more than **15 yrs** §257.904(4) III. If the offense resulted in **serious impairment of a body function** (See Footnote No. 1 on p. B-3.) (felony)-Not more than **5 yrs** §257.904(5)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	I. 1st off-Not more than **$500**; 2nd and sub offs-Not more than **$1,000** §257.904(1) & (3) II. If the offense resulted in **death** of another person (felony)-**$2,500 to $10,000** §257.904(4) III. If the offense resulted in **serious impairment of a body function-$1,000 to $5,000** §257.904(5) See Assessments on p. B- 4.
Mandatory Minimum Fine:	I. **None** II. If the offense resulted in **death** of another person (felony)-**$2,500** (appears to be mand) §257.904(4) III. If the offense resulted in **serious impairment of a body function-$1,000** (appears to be mand) §257.904(5)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: A person, who operates a CMV while their CDL privilege is suspended, is subject to the sanctions given above for the offense of driving while suspended or revoked. §257.904 A person, who operates a CMV while under a CDL out-of-service order, commits a misd offense and is subject to an imprisonment term of not more than 90 dys and/or a fine of not more than $100. §257.319d

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	For all of the above offenses-**Susp or rev**[1] §257.904(8)
Length of Term of License Withdrawal Action:	The original license susp or rev is extended for a like period.
Mandatory Term of License Withdrawal Action:	The original license susp or rev is extended a like period.
Other:	For offenses related to either **death** or **serious impairment of a body function**, the following additional sanctions apply: For either a 1st off, 2nd off (w/n 7 yrs) or a 3rd off (w/n 10 yrs), either vehicle **forfeiture** or **immobilization** as if the offense was a drunk driving offense. §257.904(6) See Vehicle Impoundment/Confiscation on pp. B-6 & 7 for further details.

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §257.625a(6)(f)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** §257.625a(6)(f)
Vehicle Passengers:	**No**
Pedestrian:	**No**

[1]For a 1st or subsequent offense, the registration plates of the vehicle involved in the offense shall also be "cancelled". §257.904(3)(a) & (b) Also, vehicle impoundment for not more than 120 dys. §257.904b

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1978) MLCC §§701(1), 703(1) & 801(2)
Minimum Age (Years) Possession:	**21** Employment exemption MLCC §703(9)
Minimum Age (Years) Consumption:	**21**[1] There is an exemption for religious services. MLCC §703(12)
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** MLCC §801(3) & (10)[2]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	The Dram Shop Law is the exclusive remedy against licensees. MLCC §801(10) Case Law abrogated by the Dram Shop Law[2]
Dram Shop Actions-Social Hosts:	**Yes Limited to minors' actions** *Longstreth v. Gensel,* 377 N.W.2d 804 (Mich. 1985), *Trayler v. Koposky,* 384 N.W.2d 819 (Mich. App. 1986), & *Gardner v. Wood,* 414 N.W.2d 706 (Mich. 1987)[3,4&5]
Other:	An intoxicated patron (or a person related to them) cannot maintain an action for damaged against a licensee as a consequence of their intoxication. MLCC §801(9)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** MLCC §§707, 901 & 909(2)
Term of Imprisonment:	Not more than **6 mos**[6]
Fine ($ Range):	Not more than **$500**[6] See Assessments on p. B-4.

[1]A person <21 yrs old may consume an alc. bev. as part of a course at a post secondary educational institution. MLCC §703(11)
[2]The law applies (1) to damages/injuries caused by visibly intoxicated persons or those under 21 years old and (2) only to retail licensees not wholesalers. *Tennille v. Action Distributing,* 570 N.W.2d 130 (Mich.App. 1997) For abrogated common law cases, see *Jones v. Bourrie,* 120 N.W.2d 236 (Mich. 1963), & *Longstreth v. Fitzgibbon,* 335 N.W.2d 677 (Mich. App. 1983).
[3]Nevertheless, a social host is not liable for the injures caused intoxicated minor guests who commit criminal acts. The court felt that there so no "foreseeability" that such minors would commit a crime and distinguished the *Longstreth* case which involved injures related to the use of motor vehicles by intoxicated minor guests. *Rogalski v. Tavernier,* 527 N.W.2d 73 (Mich.App. 1995)
[4]However, the courts have found no liability to business social hosts who have furnished alcoholic beverages to injury causing adult business guests. *Leszczynski v. Johnson,* 399 N.W.2d 70 (Mich.App. 1986), *Millross v. Plum Hollow Golf Club,* 413 N.W.2d 17 (Mich. 1987), & *Kuehn v. Edward Rose & Sons,* 472 N.W.2d 59 (Mich.App. 1991)
[5]A law enforcement officer, who was injured by an intoxicated person while on duty, cannot maintain a dram shop action against the licensee who served alcoholic beverages to the person. *McCaw v. T&L Operations, Inc.,* 550 N.W.2d 852 (Mich.App. 1996)
[6]These sanctions appear to apply only to licensees but not to licensees' employees. For employees, a violation appears to be a misdemeanor with the following sanctions: Jail-not more than 90 days; fine-not more than $100. MLCC §§909(1) & 750.504 under the Michigan Complied Law Annotated

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or Rev** MLCC §§903(1) & 907(3)
Length of Term of License Withdrawal:	Period of license susp is not specified in the statute; period of license revocation is 2 yrs Note: A civil fine of not more than $300 may be assessed in addition to or in lieu of a susp or rev.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd**[1] MLCC §§701, 801(2), 901 & 909(2)
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$500** See Assessments on p. B-4.
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or Rev**[2] MLCC §§903(1) & 907(3)
Length of Term License Withdrawal:	Susp period is not specified; revocation is 2 yrs A civil fine of not more than $1,000 may be assessed in addition to or in lieu of susp/rev.
Anti-Happy Hour Laws/Regulations:	**Yes** R 436.1438 (regulation)
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes**[3] §257.624a
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers MLCC §915(1) The law states that "[a]lcoholic liquor shall not be consumed on the public highways."

[1]The State/local police cannot charge a licensee with violating the law prohibiting the sale of alcoholic beverages to persons under 21 years old, unless these law enforcement agencies also charge the minors involved in the offense (except minors being used as undercover agents) with violating the law prohibiting such persons from purchasing or attempting to purchase such beverages. MLCC §701(4)

[2]The Liquor Control Commission cannot suspended or revoke a license or take other action against a licensee in situations where the State/local police, when enforcing the law prohibiting a licensee from selling alcoholic beverages to persons under 21 years old, have not charged the minors involved in the offense (except minors being used as undercover agents) with violating the law prohibiting these persons from purchasing or attempting to purchase such beverages. MLCC §905(1)

[3]Does not apply to a State chartered vehicle.